TABLE OF CONTENTS.

Opinion Below ---------- 1

Jurisdiction ---------- 2

Questions Presented ---------- 2

Statement ---------- 3

Specification of Errors to Be Urged ---------- 9

Reasons for Granting the Writ ---------- 9

Conclusion ---------- 25

TABLE OF AUTHORITIES.

Cases.

Elm Corporation et al. v. E. M. Rosenthal Jewelry Co., et al., 161 F. (2d) 902 ---------- 17

Gonzalez v. Archbishop, 280 U. S. 1 ---------- 21

Hudspeth v. Esso Standard Oil Co., Thompson v. Esso Standard Oil Co., 170 Fed. (2d) 448 ---------- 17

Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church in North America, 344 U. S. 94 ----------10, 21, 23

Saco-Lowell Shops v. Reynolds, 141 F. (2d) 587 ---- 17

Shelley v. Kraemer, 334 U. S. 1 (1948) ---------- 21

Watson v. Jones, 13 Wall. 679 ----------10, 11, 21

Zorach v. Clauson, 343 U. S. 306 ---------- 15

Text.

76 *C. J. S.*, Religious Societies 789 ---------- 11

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Constitution.

Constitution of the United States:
First Amendment ---------- 16, 19, 22, 24
Fifth Amendment ---------- 20

Statute.

28 U. S. C Section 1254(1) ---------- 2

In the Supreme Court of the United States

OCTOBER TERM, 1953.

No. .....

THE ROMANIAN ORTHODOX MISSIONARY EPISCOPATE OF AMERICA, THROUGH HIS GRACE BISHOP ANDREI MOLDOVAN,

Petitioner,

VS.

IOAN TRUTZA, *et al.,*

Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals For the Sixth Circuit.

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States.

The petitioner, Andrei Moldovan, respectfully petitions this Honorable Court for a writ of certiorari to review a judgment and opinion of the United States Court of Appeals for the Sixth Circuit, rendered in this cause on May 29, 1953.

OPINION BELOW.

The opinion of the Court of Appeals (R. 107-117) has not yet been reported. The opinion, the findings of fact

and conclusions of law, and the final order of the district court (RD. 102a-105a; RP. 34a-38a; 39a-42a) are not reported.[1]

JURISDICTION.

The judgment of the Court of Appeals was entered on May 29, 1953 (R. 107-108). On July 3, 1953, an order was entered amending the opinion (R. 117-118). A motion to extend time to file Petition for Rehearing was denied August 10, 1953 (R. 120). On August 24, 1953, by order of Mr. Justice Clark, petitioner's time to file a petition for a writ of certiorari was extended to and including October 20, 1953. The statutory provision believed to sustain the jurisdiction of this Court is section 1254(1) of Title 28 of the United States Code.

QUESTIONS PRESENTED.

1. Whether the Patriarch and Holy Synod of the Romanian Orthodox Church, or a Congress composed of clergymen and laymen of the American Churches, validly selects the ruling hierarch for the American Churches.

2. Whether Andrei Moldovan has power and authority to obtain possession and control of the property in question, and to exercise the privileges and prerogatives of bishop of the Episcopate by virtue of his selection and consecration as bishop of North and South America by the Supreme Church Authority of the Romanian Orthodox Church, to wit: the Patriarch of Bucharest and the Holy Synod.

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[1] References to the proceedings in the lower court are designated as "R." References to the appendix of appellants' brief in the lower court are designated "RP"; to the appendix of appellee's brief "RD." References to the stenographic transcript of proceedings in the trial court are designated as "TR."

STATEMENT.

This is an action brought in the United States District Court for the Northern District of Ohio for injunction and equitable relief by petitioner, Andrei Moldovan, in behalf of the Romanian Orthodox Missionary Episcopate of America as its duly authorized representative and ruling hierarch thereof, seeking to obtain undisturbed control and possession of certain personal property and funds of the Episcopate; to restrain the respondents from using or expending said funds; and to restrain respondents from representing that they are the duly authorized representatives of the Episcopate (R. 9a-14a). The respondents filed their answer to which they attached an alleged counter-claim for interpleader and also filed a cross-claim. Petitioner filed a motion to strike the counter-claim for interpleader, and to dismiss the cross-claim, accompanied by brief and reply brief.

The district court, upon final hearing, dismissed the petitioner's amended complaint and granted a permanent injunction against the individual petitioner restraining him from representing himself as a priest or bishop of the Romanian Orthodox Missionary Episcopate of America, and from asserting any rights based upon the claim that he is the bishop of the Episcopate to use, control or occupy either directly or indirectly any of the real or personal property of the Romanian Orthodox Missionary Episcopate in America.

In the year 1929, the various Romanian Orthodox parishes in the United States and Canada organized themselves into an episcopate or diocese of the Romanian Orthodox Church by authority of and under the Canonical and Spiritual jurisdiction of the Patriarch and Holy Synod of the Mother Church in Romania, and became known as the Romanian Orthodox Missionary Episcopate of America

(RP. 30a-31a; 32a-34a) (TR. 8, 9,—129, 130). The Romanian Orthodox Church is an autocephalous member of the Eastern Orthodox Greek Catholic Church. It is a hierarchal church with a Patriarch as its head who presides over the Holy Synod composed of Bishops and Archbishops representing the various dioceses into which the Romanian Orthodox Church is divided for purposes of church organization. The Holy Synod is the Supreme Authority in the church (RP. 20a; 22a-23a; 30a). To obtain proper leadership for the Episcopate and in order to conform with the requirements of the Canon Laws of the Orthodox Church concerning the organization and government of the Diocese, the Holy Synod of the Romanian Orthodox Church was to appoint and consecrate a Bishop to head the newly organized episcopate. A committee ad interim was appointed to manage the administrative affairs of the Episcopate until a Bishop could be appointed and sent to the United States. In the year 1932, this committee had enacted a set of by-laws, of which Article VII thereof provided that the bishop should "be elected by the Church Congress of Parishes belonging to the Episcopate called thirty days in advance, and presided by a special delegate of the Holy Synod; the elected one shall receive, if he meets all the canonical requirements, the canonical investiture from His Holiness the Patriarch of the Romanian Orthodox Church, in accordance with the traditions of the Orthodox Church." This committee administered the affairs of the Episcopate until 1935 when the Holy Synod in Romania appointed and sent to America as first Bishop of the Episcopate, His Grace Policarp Morusca (RP. 32a) (TR. 281, 282). In organizing the diocese to conform with canonical requirements, the 1932 By-Laws were compiled in their final form with certain principal changes thereto deleting the aforementioned

Article VII and providing for the election and consecration of the bishop by the Holy Synod and investiture by the Patriarch (RP. 17a), and the further requirement that any change or modification of the By-Laws must be approved by the Holy Synod to be valid (RP. 23a) (TR. 249, 250). These were submitted to and approved and ratified by member parishes of the Episcopate as represented by delegates in the Church Congress of 1936 which was presided by the newly sent Bishop (TR. 93, 95, 96). The Holy Synod in October of 1936 approved the by-laws of the Episcopate as ratified in their final form by the Church Congress of 1936 (RP. 30a) (TR. 132) (RP. 20a, 22a, 23a).

In 1938, the Episcopate purchased a large parcel of real estate in the township of Grass Lake, County of Jackson, State of Michigan (RP. 32a), title to which was taken in the name of the "Romanian Orthodox Missionary Episcopate, a non-profit Michigan corporation and His Grace Policarp Morusca, not in his proper person but as reigning prelate of the Romanian Orthodox Churches in America under the authority vested in him by the Holy Synod in Romania, or his successors as such in office, jointly as hereinafter set forth * * *." The deed to the real estate contains the provision that "* * * it is intended that the corporation shall act only as trustees for and in behalf of the Romanian populace of America and that neither they as such trustees, the Episcopate Council, nor the Church Congress shall have the right to alter the purposes or the objects contained in the original articles of incorporation of the Romanian Orthodox Missionary Episcopate, nor shall they have the right to sell, lease, assign, transfer, encumber nor do any act affecting the proprietary rights of the above described premises without the express consent and authorization of the Holy Synod of Romania

through its lawfully constituted represenative now being His Grace Policarp P. Morusca, or his successor, as such in office * * *" and further that "* * * It is likewise agreed that the restrictions as to the corporate grantee in like manner applies to the Holy Synod grantees and it is the intent that jointly the grantees may do all necessary acts that any person holding title in fee may or could do, but that neither have any possession or ownership rights without the consent of the other * * *" (RP. 32a-33a).

The real estate known as "Vatra Romaneasca" was purchased with funds supplied by the Church in Romania, and was consecrated as the SEE of the diocese and the official residence, headquarters, and place of worship of the Bishop. The predecessor bishop, Policarp Morusca, had so occupied it, and the petitioner, Andrei Moldovan, was so occupying it since his appointment as the accredited bishop of the diocese until he was dispossessed by the order of the District Court.

The Episcopate was incorporated in the State of Michigan in 1943. The articles of incorporation provide, among other things, that the member parishes which constitute the Episcopate shall worship and conduct themselves in accordance with the rules, discipline, and customs as established from time to time by the Romanian Orthodox Church and the Holy Synod thereof, its Supreme Canonical Authority; and that the Episcopate was to govern itself in accordance with the severally enacted by-laws ratified in their final form in 1936 and approved by the Holy Synod in the same year (RP. 30a, TR. 501-502).

Bishop Policarp Morusca had not resided in the United States since 1939 when he returned to Romania, and during his absence appointed Father Mihaltian to act in his place over the affairs of the Episcopate in America (TR.

138). This period, and especially the years since World War II, found the Episcopate in a state of spiritual anarchy due to the absence of a ruling hierarch here in America, and to a world in tension which induced disturbances in the American diocese. In 1947, the Vicar of the Episcopate, Father Mihaltian, received a communication that the bishop for the American Romanians was named in the person of a Dr. A. Nica, and that the Episcopate should prepare to receive him as such (RD. 10a). In the light of the political temper of the times, this created a feeling of uneasiness among members of the Episcopate Council (RD. 9a, 10a, 11a). Pursuant to a resolution of the Council, Andrei Moldovan, as secretary, protested the sending of a Bishop directly from Romania—an action which was thought would reflect on their loyalty as American citizens (RD. 23a, 24a, 25a, 26a). The Supreme Church Authority acquiesced in the request of its American adherents and did not send a Romanian citizen as Bishop. This was followed by many attempts within the Episcopate to effect and restore proper government and discipline of the Episcopate according to the laws and usage of the Romanian Orthodox Church. Seeing the futility thereof, a group of clergy and lay members of the Episcopate met in a conference in May, 1950 (TR. 470), and determined that the solution to the problems of the Episcopate would be the selection of an American citizen as bishop and ruling hierarch of the Episcopate. In accordance therewith, they directed their efforts to the Supreme Church Authority in Romania. Upon the recommendation of this group (RD. 80a, 100a), the Patriarch and Holy Synod in Romania selected Father Arch Priest Andrei Moldovan, an American Citizen, as bishop and ruling hierarch of the American diocese (RD. 38a, 39a-62a, 63a), and pursuant thereto in

November of 1950, he was consecrated by the Holy Synod and invested by the Patriarch of the Romanian Orthodox Church (RD. 79a, 80a, 81a,—91a, 92a, 93a) (TR. 307, 308-436, 437, 438-559).

The by-laws which were enacted and ratified in their final form by the Church Congress of 1936 and approved by the Holy Synod in the same year were in full force and effect during 1950 when Andrei Moldovan was appointed bishop for the American Churches. There have been discussions and even some resolutions by the Council and Church Congress relative to changing or modifying the by-laws, but none of these were ever submitted to or approved by the Holy Synod (RP. 23a) (TR. 59, 94, 250).

During the pendency of the instant case in the District Court, the individual respondents and some of their followers held a church congress in the name of the Episcopate in July of 1951, and resolved to and did sever all relationship and connection with the Mother Church and Supreme Church Authority in Romania, that is, administratively, spiritually and canonically, and further reserved the right to conduct their affairs without any authority of the Patriarch and Holy Synod (R. 114, 115, 116) (TR. 27, 28, 723, 724, 725). They further elected respondent, Viorel D. Trifa, as bishop and ruling hierarch of the Romanian Orthodox Churches in America, and pursuant thereto he was consecrated on April 26-27, 1952, outside of the Romanian Orthodox Church. The particular consecration proceedings were temporarily enjoined by the United States District Court in Philadelphia, but the respondents proceeded in violation thereof; and consequently, they were cited in Criminal Contempt on April 30, 1952. The hearing on said citation has been continued pending the outcome of the appeal in the instant case.

SPECIFICATION OF ERRORS TO BE URGED.

The Court of Appeals erred:

1. In holding that petitioner is not entitled to the relief sought in the amended complaint.

2. In holding that petitioner be enjoined from acting as a priest or bishop of the religious body in question.

3. In holding that the instant case involves a controversy between the American and Canadian church group and the Communistic government of Romania working through the hierarchy.

4. In holding that the Romanian Orthodox Missionary Episcopate of America had achieved a degree of autonomy sufficient to permit it to elect its own bishop.

5. In holding that the defendants were entitled to revoke the 1936 by-laws and deny the authority of the Holy Synod due to a discovery made in 1947, that it was dealing not with the Holy Synod and the Patriarch, but with the Communistic government of Romania which was dictating the appointment of its bishop in the United States of America and Canada.

6. In affirming the judgment of the District Court.

REASONS FOR GRANTING THE WRIT.

1. The decision of the Court of Appeals strikes down the fundamental concept of separation of church and state, and, if not reversed, constitutes an unwarranted interference into the realm of religious freedom.

The decision holds that a dissident or schismatic group of Romanian Orthodox individuals and parishes which refuses to recognize the primacy of the Patriarch and authority of the Holy Synod of the Romanian Orthodox

Church is entitled to possess, occupy and control the trust properties acquired for the worship of God under the custom and discipline of the Romanian Orthodox Church. It holds that a civil court may decree to the independent or non-conformist group of respondents possession and control of the "Vatra" hostile to the authority and action of the Mother Church, and contrary to the restrictions and reservations of the deed to said property. It holds that parishes of a hierarchal church have the right and power to declare their independence or autonomy in violation of the laws, usages and customs of the church and without the approval of the Supreme Church Authority. It undertook to transfer control of the American Churches of the Romanian Orthodox Religion from the central governing hierarchy of the Romanian Orthodox Church, the Patriarch and Holy Synod, to the governing authorities of the Romanian Orthodox Missionary Episcopate of America, a church organization limited to the diocese of North and South America. The decision, therefore, is an unlawful intrusion into the internal affairs of a religious body, contrary to the first principles of American government, violative of the First Amendment's guarantee of freedom of religions from such governmental interference, and in conflict with the applicable and controlling decisions of this Court as set forth in *Watson v. Jones,* 13 Wall. 679, and *Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church in North America,* 344 U. S. 94, and fails moreover to give proper effect to decisions of this Court governing the scope of governmental interference into an area safeguarded by the Constitution.

The extent to which the decision of the lower court invades and destroys religious liberty can more readily be determined by examining the nature and status of the Romanian Orthodox Church. The Romanian Orthodox

Church is a hierarchal church. It is not an aggregate or collection of separate parishes and dioceses which are free to federate or separate at will. An orthodox church is an indivisible whole. It is a unity and no parish or diocese may of its own will leave the Church, or what is even less tolerable, consider itself a part of the church, and live "autonomously" or be "self-governing" without breaking the unity, the indivisibility of the whole. There is only one Romanian Orthodox Church (RP. 17a). 76 *C. J. S.*, Religious Societies 789. Canon law does not permit secession or schism in the church and there is an absolute bar to such conduct (RP. 17a-23a). Those who by assertion of their own power undertake to secede or to be "autonomous" or "self-governing," cut themselves off from the church and all rights to its property (*Watson v. Jones*, 13 Wall. 679, 734). The very essence of the Episcopate as a denomination of the Romanian Orthodox religion compels conformity with the canon laws, discipline and custom of the Romanian Orthodox Church. After the first bishop was enthroned in 1935, as the head of the Episcopate, he proceeded to organize the diocese to conform with canonical requirements. The by-laws enacted in 1932 were changed to provide exclusive authority in the Holy Synod in the election of the bishop. Under Romanian Church law, which remains unaffected by any changes in temporal power, the bishop of the American diocese (Episcopate) is not elected by local churches or clergy (RP. 17a), he is appointed or elected only by the Supreme Church Authority of the Church at large; namely, the Holy Synod and its Patriarch. In point of fact, the first and only other bishop who served here was elected or appointed by the Patriarch and Holy Synod, and was answerable not to the local churches or clergy, but to the Supreme Church Authority (TR. 281-282).

The Romanian Orthodox Church is an integral, though autocephalous, part of the Eastern Orthodox Greek Catholic Church. The traditional position of the church is that it is apostolic in origin and descent, that this apostolic succession is preserved through the institution of its Ecclesiastical Hierarchy in an unbroken succession from Christ and His Disciples, that its bishops have been consecrated by those duly qualified and duly authorized by Higher Authority to perform this Sacrament, and that there must be no defect anywhere in the line of descent for the transmission of Grace (RP. 15a, 16a, 17a).

The selection and consecration of a bishop is an ecclesiastical matter which lies exclusively within the domain of high prelates of the Church. This controversy concerning the right to possess and control the properties in question is strictly a matter of ecclesiastical government, the power of the Supreme Church Authority of the Romanian Orthodox Church to appoint the ruling hierarch of the diocese of America. There can be no doubt about the power of the Supreme Church Authority of the Romanian Orthodox Church to appoint the ruling hierarch of the diocese of America. This was recognized by the insertion of Article 6 (RP. 21a) in the by-laws of the Episcopate as enacted and approved in their final form of the Church Congress of 1936 (TR. 93, 98, 96-131, 132); the provisions in the deed to the real estate "Vatra" in Grass Lake (RP. 32a); and by the Articles of Incorporation (RP. 30a). There is no evidence, whatsoever, in the record to support the statement that the Holy Synod recognized the right of the Episcopate to elect its bishop. Admittedly, the by-laws enacted in 1932 provided that the bishop should "be elected by the Church Congress of Parishes belonging to the Episcopate called 30 days in advance, and presided by a special delegate of the Holy Synod; the elected one—

shall receive, if he meets all the canonical requirements, the canonical investiture from His Holiness the Patriarch of the Romanian Orthodox Church in accordance with the traditions of the Orthodox Church." However, the court below was in error in holding that the right of the Episcopate to elect its own bishop was recognized by the Holy Synod, since the foregoing provision acknowledges the paramount jurisdiction of the Supreme Church Authority of the Romanian Orthodox Church to appoint the ruling hierarch for the American diocese. Furthermore, the foregoing provision was never approved by the Holy Synod and thus never became valid or in force. This is clearly established by the fact that Bishop Morusca was not elected by the Church Congress of the Episcopate before being consecrated and sent here as bishop in 1935 (TR. 281, 282) (RD. 103a-105a). These 1932 by-laws were approved by the Holy Synod only after the enthronement of Bishop Morusca as first bishop of the Episcopate and after the Church Congress of 1936 adopted certain changes to them, among which there was provided for the election of the bishop by the Holy Synod and for consecration by the Patriarch in Bucharest. The approval of the Holy Synod was had in October, 1936, after the Episcopate approved the above-mentioned changes at its Church Congress in July of 1936 (RP. 30a) (R. 110). The Holy Synod, as the Supreme Church Authority, did not sanction or approve any changes whatsoever in the American diocese since its final organization in 1936. The principal, and if not the sole contention advanced by the respondents in the trial hereof was that the Episcopate in America achieved a degree of autonomy that denied the right of the Supreme Church Authority, the Patriarch and Holy Synod, to select and consecrate a bishop with authority over the diocese in America. This was induced, as contended by the respond-

ents, by a discovery in 1947 that it was dealing, not with the Holy Synod and the Patriarch, but with the Communistic government of Romania, which was dictating the appointment of a bishop in the United States of America and Canada, and that the controlling and principal party to the agreement of 1935-36 was totally different from the one with which it thought it had been dealing. That discovery, as further contended by respondents, brought about the changes in the by-laws of the Episcopate in 1947 and 1948 whereby it achieved a degree of autonomy which thereafter denied the right of the Holy Synod to select and consecrate the bishop for the American Churches. The evidence as to whether such change or any changes of the (1936) by-laws then in force were ever enacted by the Episcopate is in serious dispute. However, assuming arguendo, that the Episcopate did take steps and did modify the by-laws of 1936 as contended by respondents; nevertheless, the evidence is clear and uncontroverted that the attempted changes or modifications, if any, were never submitted to or approved by the Holy Synod as required by the Church laws (RP. 18a, 19a) (TR. 80, 81, 249, 250, 425, 520, 521). The by-laws, the Articles of Incorporation, and the provisions of the deed to the real estate, and all its actions and conduct since its founding, indicate, unequivocally, that the Episcopate in America is but a diocese of the Romanian Orthodox Church, a hierarchal church with unquestioned paramount jurisdiction in the governing body in Romania over the American Episcopate. Nothing indicates that either the Holy Synod or the succeeding Patriarchs relinquished that authority or recognized the autonomy of the American church. The District Court sustained the contention of the respondents that in 1947-48 the Episcopate in America achieved a degree of

autonomy that denied the right of the Supreme Church Authority, the Patriarch, and Holy Synod, to select and consecrate a bishop with authority over the diocese in America, and made a finding of fact and conclusion of law to that effect (RP. 35a-37a). The court below, in affirming this particular determination of the District Court, stated as follows in its opinion: "We agree with the District Court that under these circumstances the defendants were entitled to revoke their previous by-laws and to re-establish the by-laws of 1932." The Circuit Court further stated that "this conclusion is in accord with the spirit, if not the letter of the *Kedroff* case, * * *" (R. 116). Such a finding furnishes no constitutional justification for the suppression of the Patriarchal Church. The Courts below were without authority to take sides in the religious controversy as to the right of autonomy, involving the power to appoint or elect a bishop which was dependent on the laws, custom, and tradition of the Church at large. It is not within the competence of courts under our constitutional system to approve or disapprove or in any manner control the internal affairs of a religious body. The decision below constitutes an unwarranted interference in ecclesiastical matters and certainly a departure from the traditional American principle of separation of church and state. In an atmosphere where the concept of the separation of church and state is closely guarded, the choice has always been clear. Government, through its judicial branch, should not be permitted, under cover of political expediency, to transgress into the sacred area of religion safeguarded by the Constitution. This finds exemplary expression in the words of Mr. Justice Douglas in delivering the opinion of the Court in *Zorach v. Clauson*, 343 U. S. 306, at page 312, wherein he stated: "There cannot be the

slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated. And, so far as interference with the 'free exercise' of religion and an 'establishment' of religion are concerned, the separation must be complete and unequivocal. The First Amendment within the scope of its coverage permits no exception; the prohibition is absolute."

On appeal, the Court below stated that the group supporting Moldovan split off from the Episcopate and set up its schismatic body. The record indicates the contrary. The group which requested the election of Bishop Moldovan, the petitioner herein, was constituted of clergy and lay members of the Episcopate who were dissatisfied with the heresy practiced by respondent, Ioan Trutza, and as a result thereof, directed their efforts to the higher authorities within the Church, namely, the Patriarch and Holy Synod, to effect and restore proper government and discipline of the Episcopate according to the laws and usage of the Romanian Orthodox Church. Assuredly, the clergy and lay members who conferred on the problems of the Church did so in the best interest of the Church and within their rights. The fact that the Patriarch and Holy Synod approved their request and appointed Father Arch Priest Andrei Moldovan as bishop refutes the statement that they split off from the Episcopate and set up its schismatic body. The petitioner and his followers have remained in the Church, true to the discipline of the Mother Church, fully recognizing the primacy of the Patriarch and authority of the Holy Synod, as Supreme Church Authority of the Romanian Orthodox Church. Such a group having the full approval and recognition of the Supreme Church Authority certainly cannot be designated schismatics (RP. 19a).

2. The basic and all-permeating error of the Court below was its assumption that petitioner, Andrei Moldovan, has not shown himself to be a bishop elected by the Holy Synod. Such a finding has no basis in fact, is wholly arbitrary, made on the Circuit Court's own motion, in defiance of contrary evidence in the record, contrary to the findings of the District Court, and beyond the proper function of such court. The court below resolved many of the factual issues contrary to the findings of the District Court, although affirming the judgment of said court. It is not the function of a federal appellate court to retry facts on appeal. Findings of the District Court are binding on Circuit Court of Appeals except to the extent that they are clearly wrong. While Courts of Appeal, under federal rule, now act as Courts of review in all non-jury cases, in accordance with the practice formerly prevailing in equity appeals, they do not retry cases or substitute their judgment for that of the trial court on fact issues, if such court's determination thereof is not demonstrably wrong. *Hudspeth v. Esso Standard Oil Co., Thompson v. Esso Standard Oil Co.,* 170 Fed. (2d) 448. *Elm Corporation et al. v. E. M. Rosenthal Jewelry Co., et al.,* 161 F. (2d) 902. *Saco-Lowell Shops v. Reynolds,* 141 F. (2d) 587.

In the instant case, the court below went on to make findings of fact contrary to the record and contrary to the findings of the District Court, while at the same time agreeing with the District Court and affirming its judgment. The decision in this regard is based on a clear misapprehension of the record. The lower court has misread the fact finding in this connection. The trial judge in his opinion stated as follows: "The sole question for the determination of this Court therefore, is whether or not the Romanian Orthodox Missionary Episcopate or the Romanian Orthodox Episcopate of America has achieved a

degree of autonomy which is sufficient to permit it to elect its own bishop. If such autonomy rests in the episcopate here, the selection and consecration of a bishop by the Holy Synod cannot empower such bishop to obtain possession of the property in question, nor can he obtain relief such as is sought by the plaintiff here, to exercise the privileges and prerogatives of the bishop over this episcopate in the United States," and continuing therein further stated, "the evidence is overwhelming that the by-laws in effect and duly adopted at the time plaintiff (petitioner) claims to have ascended to the office required the bishop to be elected by the episcopate congress" (RD. 104a).

The District Court found that at the time petitioner ascended to the office of bishop, the by-laws required the bishop to be elected by a church congress of the Episcopate. The petitioner contended that a church congress of the Episcopate does not have authority to elect the bishop, and admitted that he was not elected by a church congress prior to his selection and consecration by the Holy Synod. The District Court found and so stated in its opinion, that, "the evidence is conclusive that the Episcopate enjoyed an autonomous existence in so far as election of its bishop is concerned" (RD. 105a); and therefore concluded that since petitioner was not elected by a church congress of the Episcopate, that he has never been elected and consecrated a bishop in conformity with the by-laws of the Romanian Orthodox Missionary Episcopate in America, and is therefore not the bishop of said Episcopate (RP. 37a), and consequently, not entitled to the relief sought. Therefore, the sole question for the trial court was one of determining who validly selects the ruling hierarch for the Episcopate in America. The District Court found that a

Congress of the Episcopate in America selects the bishop and not the Holy Synod in Romania, and therefore dismissed petitioner's Complaint. This is further evidenced by the statement of the trial judge during cross-examination of petitioner at the trial hereof (RD. 72a):

> "The Court: The crux of this whole question is whether or not the witness on the stand is the duly consecrated bishop of the Episcopate at Grass Lake, Michigan. *Now, you claim he is; the defendant say that he is not because they claim it was a wholly autonomous and separate body, separate church organization established in 1947 or 1948, wholly autonomous, separate and apart from the Church which consecrated this witness a bishop.* Now there is the crux of the question. What names were used certainly is of no great moment, and there isn't any use of getting into any great furor or controversy about it." (Italics ours.)

We submit that the decision below constitutes an unwarranted substitution of the facts and issue by the Circuit Court beyond the scope of its authority on review herein. The Circuit Court of Appeals, we submit, misconstrued the issue in the District Court and the significance of the evidence in relation thereto.

3. The decision below constitutes an unwarranted and a grave interference with ecclesiastical functions of church authorities.

The issue reduces itself to whether the decision has either prohibited the "free exercise" of religion, or has made a law "respecting an establishment of religion" within the meaning of the First Amendment. It is important to note what has been done in this case by judicial action. It has been held by judicial decree that petitioner, Andrei

Moldovan, may not act as a bishop or priest of the denomination and church for which he was consecrated, or be revered as such by all who will follow him. It has held that the faithful of the Romanian Orthodox Church in America may not be led in worship by and may not have as ruling hierarch one who has received his appointment and obtained apostolic succession according to the traditions, discipline, and laws of the Romanian Orthodox Church. It has held that petitioner may not have the central place of worship or possess or occupy the very site which was acquired and consecrated for and as the seat and SEE Church of the diocese, the "Vatra." The "Vatra" was purchased and substantially maintained by the Mother Church with its money for the use of its bishop. From the very beginning it has so been used. The Mother Church has, apart from its religious and canonical interest, a vested property interest in the "Vatra," and its use by it and its bishop, as his residence, central place of worship, and as the headquarters of the diocese. Extinction of that interest and denial of such use by judicial decision constitutes an unconstitutional deprivation of a vested property right. Such decree is unconstitutional and repugnant to the Fifth Amendment of the Constitution of the United States. Judicial decisions, no less than legislative and executive acts must comply with the due process provision of the Constitution. The judgment below prohibits the free exercise of his religion by the "canonical bishop" and outlaws "Patriarchal" jurisdiction from this country. For the judiciary to direct all Romanian Orthodox Churches in America to recognize and subject themselves to the jurisdiction of the respondent group which has neither canonicity or apostolic succession, is a grave intrusion into that field of conscience which is protected by the Constitution.

4. The decision below fails to give proper effect to applicable decisions of this Court as to the authority of secular courts in matters of ecclesiastical government, and is contrary to the controlling decisions of this Court as set forth in *Watson v. Jones*, 13 Wall. 679, and *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94.

It is well settled that whenever questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest and proper church tribunal, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them. *Watson v. Jones*, 13 Wall. 679; *Gonzalez v. Archbishop*, 280 U. S. 1, 16-17. In failing to give due weight to the canonical act of appointment of petitioner, Andrei Moldovan, by the Patriarch and Holy Synod of the Romanian Orthodox Church, the Court below disregarded the basic foundation of those decisions. This Court, in *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94, made it clear that "Freedom to select the clergy, where no improper methods of choice are proven * * * must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference"; and in view thereof, the determination of an ecclesiastical controversy is now provided with constitutional safeguards. The proposition affirmed by this Court in *Shelley v. Kraemer*, 334 U. S. 1 (1948), "that the action of state courts and judicial officers in official capacities is to be regarded as action of a state within the meaning of the Fourteenth Amendment, * * *" may properly be applied to judicial action of the Federal Courts herein as constituting governmental action forbidden by the religious protection clause of the First Amendment.

The lower court held that the decision of this Court in *Kedroff v. St. Nicholas Cathedral of the Russian Ortho-*

dox Church in North America, 344 U. S. 94, is not applicable to the instant case inasmuch as this is not a case of legislation claimed to be violative of the First Amendment to the Constitution of the United States, but a "controversy between the American and Canadian church group and the Communistic government in Romania working through the hierarchy." Thus, the decision rests, not on issues specifically litigated in the trial court, but on atmospheric considerations of general undesirability; unsubstantiated at the trial below, and clearly unsupported by the record.

In the instant case the trial court stated in its opinion (RD. 104a), and we quote:

> "The sole question for the determination of this Court, therefore, is whether or not the Romanian Orthodox Missionary Episcopate or the Romanian Orthodox Episcopate of America has achieved a degree of autonomy which is sufficient to permit it to elect its own bishop. If such autonomy rests in the episcopate here, the selection and consecration of a Bishop by the Holy Snyod cannot empower such bishop to obtain possession of the property in question, nor can he obtain relief such as is sought by the plaintiff here, to exercise the privileges and prerogatives of the bishop over this episcopate in the United States."

Stated in other words, the question is one of determining who validly selects the ruling hierarch for the Romanian Orthodox Churches in America with authority to obtain possession of the property in question. This determination of the right to use, occupy and control the property of the Episcopate in America depends upon whether the appointment of Andrei Moldovan by the Supreme Church Authority of the Romanian Orthodox Church, to wit, The Patriarch locum tenens in Bucharest and its Holy Synod, or the election of a bishop for America

by the Congress of the American parishes belonging to the Episcopate, validly selects the ruling hierarch for the American churches. The District Court, affirmed by the court below, found and concluded that in 1947, because of fear of interfering and meddling by the Romanian authorities with church affairs in the United States, the Episcopate established its autonomy as created by the adoption of new by-laws by the church congress of 1948, thereby achieving a degree of autonomy which thereafter denied the right of the Holy Synod in Romania to select and consecrate a bishop with authority over the Episcopate in America. The record, however, clearly establishes petitioner's contention throughout that the Patriarch or Holy Synod of the Romanian Orthodox Church never relinquished its authority or recognized the autonomy of the American Church, nor did they approve the respondents as officers of the Episcopate or any of their actions in connection therewith in the years 1947 and thereafter (TR. 363-364, 466, 520, 521). In the *Kedroff* case, the unlawful intrusion into the forbidden area of religious freedom was accomplished by legislative fiat. In the instant case, it was done by judicial fiat. Can it be concluded, as the court below would indicate, that, though a legislative body may not transfer the control of churches of one religious denomination from the central governing hierarchy of the church to a church organization limited to the diocese of North and South America, that the judiciary has such authority? Admittedly, the central governing hierarchy of the Romanian Orthodox Church, the Patriarch and Holy Synod, had unquestioned paramount jurisdiction over the Episcopate in America, and, admittedly nothing indicates that the Holy Synod or any succeeding Patriarch relinquished such authority or recognized the right of the American church to appoint its own bishop. The decision

below, therefore, undertook to transfer control of the American churches of the Romanian Orthodox Church from the central governing hierarchy of the Mother Church, the Patriarch and Holy Synod, to the respondents who purport to be the governing authorities of the Romanian Orthodox Missionary Episcopate of America, a church organization limited to the diocese of North and South America. The decision of the District Court, as affirmed by the court below, constitutes a reversal by a secular court of the decision of the Patriarch and Holy Synod in the appointment of Bishop Moldovan. It displaces one church administrator with another. It passes the control of matters strictly ecclesiastical from one church authority to another. It thus intrudes for the benefit of one segment of a church the power of the government, through its judiciary, into the forbidden area of religious freedom contrary to the principles of the First Amendment. The decision as affirmed below directly prohibits the free exercise of an ecclesiastical right, the church's choice of its hierarchy.

The record shows no schism over faith or doctrine between the Romanian Church in America and the Romanian Orthodox Church. It shows paramount control of the American diocese (Episcopate) by the Supreme Church Authority of the Romanian Orthodox Church, including the appointment of the ruling hierarch in America from the foundation of the diocese (Episcopate) until the present day. There is nothing that indicates a relinquishment of this power by the Romanian Orthodox Church. The action below has divested the Romanian Orthodox Church of spiritual authority and of the temporal property which it symbolizes in contravention of the prohibitions of the First Amendment. The history of past attempts at secular intervention in religious conflicts makes it clear that in-

terference with religious attachments can only lead to the total subversion of the body in question. This is beyond the competence of courts in our constitutional system.

CONCLUSION.

For the foregoing reasons, we respectfully submit that this petition for a writ of certiorari should be granted.

Respectfully submitted,

DON C. MILLER,
Attorney for Petitioner.

JOHN R. VINTILLA,
OWEN C. NEFF,
ANDREW W. KOPS,
Of Counsel.

STATEMENT OF QUESTIONS INVOLVED.

1. Whether the plaintiff religious body, organized as an episcopate or diocese of the Romanian Orthodox Church, a general ecclesiastical organization, validly changed its by-laws and had the power to declare its autonomy or independence in violation of its laws and charter provisions and contrary to the laws, discipline and custom of the general organization?

The lower court failed to answer this question.

The appellant contends that it should be answered "No."

2. Whether the plaintiff, Bishop Andrei Moldovan, had been elected, consecrated, and invested a bishop in conformity with the by-laws, canon laws, discipline and custom of the Romanian Orthodox Missionary Episcopate in America, and therefore the bishop of said Episcopate?

The lower court answered this question "No."

Appellant contends that it should be answered "Yes."

3. Whether the plaintiff, Bishop Andrei Moldovan, is entitled to the possession, use, control, or occupation of the real and personal property of the Romanian Orthodox Missionary Episcopate in America now in the possession and/or under the control of the defendants?

The lower court answered this question "No."

Appellant contends that it should be answered "Yes."

TABLE OF CONTENTS.

Statement of Questions Involved ..... Prefixed

Statement of Facts 1

Argument 8

1. Whether the plaintiff religious body, organized as an episcopate or diocese of the Romanian Orthodox Church, a general ecclesiastical organization, validly changed its by-laws and had the power to declare its autonomy or independence in violation of its laws and charter provisions and contrary to the laws, discipline and custom of the general organization? 8

2. Whether the plaintiff, Bishop Andrei Moldovan, had been elected, consecrated, and invested a bishop in conformity with the by-laws, canon laws, discipline and custom of the Romanian Orthodox Missionary Episcopate in America, and therefore the bishop of said Episcopate? 17

3. Whether the plaintiff, Bishop Andrei Moldovan, is entitled to the possession, use, control, or occupation of the real and personal property of the Romanian Orthodox Missionary Episcopate in America now in the possession and/or under the control of the defendants? 21

Relief 32

TABLE OF AUTHORITIES.

Cases.

Bakos et al. v. Takach, 14 Ohio Ap. 370 26

Baxter v. McDonnell, 155 N. Y. 101; 49 N. E. 671..... 19

Borgman et al. v. Bultema et al., 182 N. W. 91; 213 Mich. 684 ..... 9, 25

Central New York Episcopate Diocese v. Colgrove, 4 Hun. N. Y. 362 10

Methodist Episcopal Church v. Wood, 5 Ohio 283..... 26

Ramsey v. Hicks, 44 Ind. App. 514, 87 N. E. 1100..... 19

Rottman v. Bartling, 22 Neb. 375, 35 N. W. 126..... 14

Russian-Serbian Holy Trinity Orthodox Church of St. Paul v. Kulik, et al., 279 N. W. 364, 202 Minn. 560 ..... 13, 19

Shoup, et al., Ex parte, 9 Ohio Decisions Reprint 648 27

Smith v. Pedigo, 145 Ind. 389, 33 N. E. 786..... 24

Watson v. Jones, 13 Wallace 679 ..... 21, 25, 28

Texts.

76 *Corpus Juris Secundum*, Religious Societies..9, 14, 15

35 *Ohio Jurisprudence*, Religious Societies 20

TABLE OF CONTENTS OF APPENDIX.

(Attached)

Docket Entries 1a

Plaintiff's Amended Complaint (March 16, 1951) ... 9a

Excerpts from Transcript of Testimony:

Testimony of the Rt. Rev. Dionisizie Milivozevich 14a

Plaintiff's Exhibit 2. Excerpts from By-Laws for the Romanian Orthodox Churches in America 20a

Plaintiff's Exhibit 13. Articles of Association of the Episcopia Misionara Ortodoxa Romana in America the Romanian Orthodox Missionary Episcopate in America 30a

Plaintiff's Exhibit 14. Warranty Deed, Edwin W. Chandler and Wife to Romanian Orthodox Missionary Episcopate, May 18, 1938 ..... 32a

Findings of Fact and Conclusions of Law (Aug. 4, 1952) 34a

Order of Permanent Injunction and Dismissal of Amended Complaint (Aug. 4, 1952) 39a

No. 11,743.

United States Court of Appeals

FOR THE SIXTH CIRCUIT.

ROMANIAN ORTHODOX MISSIONARY EPISCOPATE, ETC.,
Plaintiff-Appellant,

vs.

IOAN TRUTZA, *et al.*,
Defendants-Appellees.

BRIEF OF APPELLANT.

STATEMENT OF FACTS.

The plaintiff, Bishop Andrei Moldovan, filed his amended complaint in a representative capacity in behalf of the Romanian Orthodox Missionary Episcopate of America as its duly authorized representative and reigning prelate thereof. The action was instituted to enjoin the defendants from functioning or representing themselves as officers and/or agents of the plaintiff religious organization, and to have the defendants turn over to the individual plaintiff, as the rightful head and reigning prelate of the plaintiff Episcopate, all the property, real or personal, which the defendants have in their possession and which they are wrongfully withholding from the plaintiff. The defendants filed their answer to the amended complaint, denying the allegations therein, and have attached to their answer an alleged counter-claim for interpleader, seeking an order that the Romanian Orthodox Missionary Episcopate in America be made a party defendant to respond

to the amended complaint and the counter-claim. A general appearance and voluntary submission to the jurisdiction of the court was then filed by the alleged new defendant, The Romanian Orthodox Missionary Episcopate in America, along with a motion for temporary restraining order, motion for preliminary injunction, and an answer and cross-claim. The plaintiff then filed a motion to strike the counter-claim for interpleader and to dismiss the cross-claim, accompanied by brief and reply brief. The trial judge postponed a determination upon the motion until a final hearing on the merits of the principal action was had. At the end of the trial, the trial judge granted leave to the defendants to file an amended cross-claim, and plaintiff an answer thereto.

The Romanian Orthodox Missionary Episcopate in America was formed as a religious organization in 1929 by delegates and priests representing various Romanian Orthodox Churches in the United States and Canada and by authority of and under the canonical and spiritual jurisdiction of the Holy Synod of the Mother Church in Romania. (R. 8-9; 129-130.) The Holy Synod is a body of bishops of the Romanian Orthodox Church and is the highest authority in all religious matters. (R. 9-129.) The first bishop for the Romanian Orthodox Missionary Episcopate in America was elected, consecrated and invested by the Holy Synod of the Mother Church in Romania and sent to the United States in 1935 as reigning prelate of the Episcopate. The by-laws for the organization of the Romanian Orthodox Missionary Episcopate in America were enacted in 1932 and approved and ratified in their final form by the member parishes of the Episcopate, as represented by delegates in a church congress held in 1936 and presided by Bishop Policarp Morusca, the first bishop of the Romanian Orthodox Missionary Episcopate in

America (R. 93, 95, 96), and were also approved by the Holy Synod in 1936. (R. 132.) The By-Laws as ratified in their final form by the church congress of 1936, provided, among other things, that the Episcopate is to govern itself in accordance with the canon laws and in conformity with the laws of the country in which the Episcopate has jurisdiction. They further provide that the Episcopate is to govern its administrative and temporal affairs through its own organs and that at the head of the Episcopate shall be a bishop, who shall be elected and consecrated by the Holy Synod; and that any change or modification of those by-laws shall be valid only with the approval of the Holy Synod. The first bishop of the Episcopate had not resided in the United States since 1939, and during his absence appointed Father Mihaltian to act in the name of the bishop over the affairs of the Episcopate in America. (R. 138.)

In the year 1938, the plaintiff organization purchased a large parcel of real estate in the township of Grass Lake, County of Jackson, State of Michigan, title to which was taken in the name of the "Romanian Orthodox Missionary Episcopate, a non-profit Michigan corporation and His Grace Policarp Morusca, not in his proper person but as reigning prelate of the Romanian Orthodox Churches in America under the authority vested in him by the Holy Synod in Romania, or his successors as such in office, jointly, as hereinafter set forth * * *." The deed to the real estate contains the provisions that "it is intended that the corporation shall act only as trustees for and in behalf of the Romanian populace of America and that neither they as such trustees, the Episcopate Council, nor the church congress shall have the right to alter the purposes or the objects contained in the original articles of incorporation of the Romanian Orthodox Missionary Episcopate, nor shall they have the right to sell, lease, assign, transfer, en-

cumber nor do any act affecting the proprietary rights of the above described premises without the express consent and authorization of the Holy Synod of Romania through its lawfully constituted representative now being His Grace Policarp P. Morusca, or his successor, as such in office" and further that "It is likewise agreed that the restrictions as to the corporate grantee in like manner applies to the Holy Synod grantees and it is the intent that jointly the grantees may do all necessary acts that any person holding title in fee may or could do, but that neither have any possession or ownership rights without the consent of the other." The real estate became and still is known as the "Vatra Romaneasca" and as such was and is the seat and See Church of the bishop of the plaintiff Episcopate.

The plaintiff religious organization was incorporated in the State of Michigan in 1943. The articles of incorporation provided, among other things, that the member parishes which constitute the Episcopate shall worship and conduct themselves in accordance with the rules, discipline, and customs as established from time to time by the Romanian Orthodox Church and the Holy Synod thereof, its supreme canonical authority; and that the Episcopate was to govern itself in accordance with the severally enacted by-laws as ratified in their final form in 1936 and approved by the Holy Synod in the same year. (R. 501-502.) At the present time the plaintiff religious corporation is in good standing as a Michigan corporation and there never has been any change or amendment to the original articles of incorporation.

The plaintiff religious organization, having its seat at the "Vatra," Grass Lake, Michigan, has used and is also known by the following names:

The Romanian Orthodox Missionary Episcopate of America.

The Romanian Orthodox Autonomous Missionary Episcopate in America.

The Romanian Orthodox Autonomous Missionary Episcopate of America.

The Romanian Orthodox Autonomous Episcopate of North and South America.

The Romanian Orthodox Autonomous Episcopate in America.

The Romanian Orthodox Episcopate in America.

The Romanian Orthodox Missionary Episcopate. (R. 41, 460, 461.)

Bishop Policarp Morusca, the reigning prelate of the Romanian Orthodox Missionary Episcopate of America, never returned to the United States since his return to Romania in 1939. During the years immediately following World War II and thereafter, the Episcopate continuously was beset with strife within its group, due to the absence of Bishop Policarp who was still the reigning prelate. (R. 274.) Many discussions were had and some resolutions taken at the church congresses of the Episcopate during this period, but none were ever submitted to or approved by Bishop Policarp or the Holy Synod. (R. 274, 363, 520, 521.) The absence of the head and reigning prelate in America was reflected in the turmoil of the Episcopate which was gradually being disintegrated and drifting from its original purposes. Heresy ran rampant within. In May of 1950, a group of Romanian Orthodox clergy met in a conference for the purpose and interest of saving the Romanian Orthodox Church and Faith in America from heresy and disintegration. They resolved to request a solution to the problems of the Episcopate from the Patriarch and Holy Synod of the Romanian

Orthodox Church and along therewith, requested that the Holy Synod grant the Episcopate complete autonomy in its administrative matters and that the Holy Synod elect and consecrate a new bishop for the Episcopate in America in accordance with Article 6 of the By-Laws, preferably an American citizen by the name of Father Andrei Moldovan. (R. 470.)

Father Andrei Moldovan, an American citizen and plaintiff herein, was elected to become the bishop and reigning prelate of the plaintiff religious organization by the Holy Synod of the Romanian Orthodox Church and pursuant thereto in November, 1950 was consecrated and invested by the Holy Synod and Patriarch of the Romanian Orthodox Church as bishop and reigning prelate of the Romanian Orthodox Missionary Episcopate of America. (R. 335, 336, 337, 338.) The plaintiff bishop was elected, consecrated, and invested as reigning prelate and successor to Bishop Policarp Morusca in full compliance with Article 6 of the By-Laws for the organization of the Romanian Orthodox Missionary Episcopate of America, which were ratified in their final form in the church congress of the Episcopate in 1936, and approved by the Holy Synod in the same year. (R. 470.) There have been no changes, or modifications to these 1936 by-laws which have ever been submitted to or approved by the Holy Synod as provided in Article 13 of those by-laws. (R. 59, 94, 250.) The 1936 by-laws have been and still are in full force and effect ever since their adoption and approval by the Holy Synod in 1936, and during the year 1950 when the individual plaintiff was elected and consecrated as bishop for the plaintiff religious organization. During the pendency of this action, the defendants, and some of their followers held a church congress in July of 1951, in the

name of the plaintiff organization, at which they severed all relationship and connections with the Mother Church and Holy Synod in Romania-administratively, spiritually and canonically and reserved the right to conduct all of their affairs without any authority of the Holy Synod. (R. 27, 28.) At that time, a separation took place in the plaintiff organization which resulted in the organization of two separate and distinct bodies, each of which assumed the name, and from that time hereto there have been two groups, each claiming to be the plaintiff organization, entitled to the trust property described in the plaintiff's amended complaint.

The trial court upon final hearing dismissed the plaintiff's amended complaint and granted a permanent injunction against the individual plaintiff enjoining him from representing himself as a priest or bishop of the Romanian Orthodox Missionary Episcopate in America; enjoining him from using the name "Solia" as the title to any publication; enjoining him from the use, control, or occupation of any of the real or personal property of the Romanian Orthodox Missionary Episcopate of America and enjoining him from asserting any rights based upon the claim that he is the bishop of the Episcopate to use, control, or occupy either directly or indirectly any of the real or personal property of the Romanian Orthodox Missionary Episcopate in America.

ARGUMENT.

1. Whether the plaintiff religious body, organized as an episcopate or diocese of the Romanian Orthodox Church, a general ecclesiastical organization, validly changed its by-laws and had the power to declare its autonomy or independence in violation of its laws and charter provisions and contrary to the laws, discipline and custom of the general organization?

The lower court failed to answer this question.

The appellant contends that it should be answered "No."

One of the principal questions involved and which must be settled first is—What is the type or nature of government by which the Romanian Orthodox Missionary Episcopate is regulated?

The various Romanian Orthodox parishes in the United States and Canada organized themselves into the Romanian Orthodox Missionary Episcopate in America in the year 1929 at which time they became a part of the Romanian Orthodox Church, and under the canonical and spiritual jurisdiction of the Holy Synod thereof. (R. 8, 9.) The Holy Synod in the Romanian Orthodox Church is a body of bishops or prelates, and, as such, is the highest authority within the Church relative to all church or religious matters. (R. 9, 128.) Plaintiff religious organization became a part of a general ecclesiastical organization, the Romanian Orthodox Church, and reaffirmed such affiliation by a church congress held in 1936 which was composed of delegates representing its constituent parishes, and at which congress, it ratified a set of by-laws or statute for the organization of the Episcopate. (R. 94, 95, 96.) By becoming an episcopate or diocese of the Romanian Orthodox Church, plaintiff organization submitted and became

subject to its laws, discipline, and usages. The Romanian Orthodox Church has prelatical or episcopal government. The highest governing body of the church is the Holy Synod. (R. 128.) At the head of the Church is a Patriarch who presides over the Holy Synod composed of Bishops and Archbishops representing the bishoprics into which the Romanian Orthodox Church is divided for purposes of church organization. The plaintiff organization was formed and has existed in subordination to the discipline and rules of a greater body of which they formed an integral part. With regard to the organization and nature of religious bodies in the United States, it is stated in 76 *Corpus Juris Secundum*, Religious Societies, at page 745, as follows:

> "Organization in General.
>
> The organization of religious societies in the United States may be affected, and generally is, by one of three different systems of church government; episcopacy or prelacy, presbyterianism, congregationalism. The first of these systems, episcopacy or prelacy, may be described as a church ruled by one or by a special group by virtue of a claimed divine right."

And further at p. 787:

> "b. Particular Relations or Denominations.
>
> Generally speaking, local churches following the congregational form of organization or relationship combine purely for fellowship and retain their individual independence in matters temporal and ecclesiastical. On the other hand, local churches following the presbyterial or prelatical form of organization surrender a large part of their independence to a representative body in the case of the presbyterial and to a superior official or prelate in the case of the episcopal, Roman Catholic, or prelatical type of organization."

Borgman v. Bultema, 182 N. W. 91, 213 Mich. 684.

A government of a church by bishops or prelates is an episcopal or prelatical type of organization. *Central New York Episcopate Diocese vs. Colgrove*, 4 Hun. N. Y., 362, 366.

The plaintiff organization is governed by statutes or by-laws for the organization of the Episcopate in America and a body of canon laws of the Romanian Orthodox Church. These define in detail the powers and duties of all church authorities and the relationship of the local parish to the episcopate and the episcopate to the Mother Church. After the election and consecration of the first Bishop for the Episcopate in America by the Holy Synod of the Mother Church, the Episcopate in its church congress of 1936, which was presided by the newly sent Bishop, adopted certain statutes or by-laws in their final form for the organization of the Episcopate, and to govern its relationship with the Romanian Orthodox Church. These were approved by the Holy Synod of the Mother Church in 1936 and became binding on the plaintiff organization and its constituent members. (R. 131, 132.) (93, 98, 96.) The only statutes or by-laws enacted by the plaintiff organization and approved by the Holy Synod are those of 1936, by which the Episcopate was governed subsequent thereto. Among other things, they provide as follows:

Article 1, page 19.

"The Rights of the Episcopate.

The Missionary Episcopate includes all the Romanian Orthodox Christians living in the territories of the western countries, the United States of North America, Canada and South America. It forms a constituent part of the Romanian Orthodox Church and maintains spiritual and canonical unity with the Holy Synod and organic ties with the Romanian Patriarchate and the national Church Congress."

Article 3, page 19.

"The Holy Synod of the Romanian Orthodox Church is the highest authority for canonical and spiritual questions, and the supreme tribunal for religious questions of any nature, which, in accordance with the laws and regulations, enter into its competence."

Article 13, page 26.

"The legal power of these by-laws and its modification.

"The dispositions contained in this statute (by-laws) can only be modified by the Church Congress, especially summoned for this purpose, thirty days in advance, and with a majority of two-thirds of its members. The modifying of the statute is valid only with the approval of the Holy Synod."

The evidence throughout is uncontroverted that the plaintiff organization was founded and existed subsequent thereto in subservience to a higher authority, the Patriarch and Holy Synod of the Romanian Orthodox Church. This was clearly established by the ratification of the 1936 Statutes or by-laws by the church congress of the plaintiff organization, and the subsequent adherence thereto by the plaintiff organization and its constituent parishes. Upon the submission of these statutes or by-laws for the organization of the plaintiff religious body to its 1936 church congress, these laws became operative by virtue of the approval and ratification of said church congress, and the acceptance and acquiescence therein by the membership and all the other authorities of the Church, and thus became the organic law of the plaintiff religious body and remains as such today. The plaintiff organization reaffirmed its affiliation with the Mother Church and Holy Synod thereof as shown by the provisions in the deed by which it ac-

quired real estate in Michigan, and the provisions of the articles of incorporation. In the instant case, the members of the plaintiff organization did not reserve to themselves the right to acquire, hold and enjoy property free from the discipline of the Mother Church and Holy Synod thereof, but specifically stated that they organized in subservience thereto. The incorporators of the plaintiff organization in 1943 plainly stated their intentions "* * * to preserve and secure the unity of worship by abiding in the unfeigned doctrines and tenets of the Eastern Orthodox faith and in the traditions and usages of the Romanian Orthodox Church * * *" and that "the member parishes of said episcopate shall worship and labor together according to the discipline, rules and usage of the Romanian Orthodox Church in the United States of America as from time to time authorized and declared by the Holy Synod of the Autokephalos Romanian Orthodox Church of Romania, its supreme canonical authority * * *." (R. 501, 502.)

At the time the plaintiff body was organized, the member parishes had the right to organize independently of any superior organization, and to reserve exclusive control to themselves in the conduct and management of their affairs, or to organize in subordination to the discipline and rules of a greater body of which they may form an integral part. The plaintiff organization chose the latter, and having once done so and submitted to the authority of a higher or general ecclesiastical organization, it, or any of its constituent parishes, could not declare their independence or autonomy in violation of the laws, usages or customs of the general organization. The Holy Synod, as the supreme church authority of the plaintiff organization, did not sanction or approve any changes whatsoever in the plaintiff body since its final organization in 1936. As specifically provided in the by-laws of the plaintiff organization, any proposed

amendment or modification of the by-laws must be approved by the Holy Synod in order to be valid. In the case of *Russian-Serbian Holy Trinity Orthodox Church of St. Paul v. Kulik, et al.*, 274 N. W. 364, 202 Minn. 560, the Court there had the problem of whether a parish of a larger organization could declare its independence in violation of the laws, usages and customs of the general organization, and in answer thereto held as follows:

Syl. 1. Religious Societies.

"A statute authorizing incorporated churches to belong to a religious denomination or sect permits affiliation subject to the laws and rules of the denomination or sect, and hence incorporation does not necessarily make a church independent."

Syl. 2.

"A congregation or parish of a general ecclesiastical organization does not have the power to declare its independence in violation of the laws, usages and customs of the general organization."

The position of the defendants-appellees is that sometimes during the years 1947 and 1948, the plaintiff organization changed its statutes or by-laws, whereby it achieved a degree of autonomy which thereafter denied the right of the Holy Synod to select and consecrate a bishop for the plaintiff organization. The evidence as to whether such change or any changes of the 1936 statutes or by-laws were ever enacted by the plaintiff organization is in serious dispute. Assuming arguendo, that the plaintiff organization did take steps to modify the 1936 statutes; nevertheless, the evidence is clear and uncontroverted that any attempted modification was never submitted to or approved by the Bishop or the Holy Synod as required by the 1936 statutes which were admittedly, in force, ever since their adoption and ratification in 1936. (R. 80, 81, 250, 251, 425, 520, 521.)

Having been accepted and recognized as binding, these 1936 statutes could be changed or amended only in the manner provided therein; that any change to be valid must be approved by the Holy Synod. On this question, it is further stated in 76 *Corpus Juris Secundum,* Religious Societies, at page 746:

> "Compact, Constitution and Rules.
>
> b. Alteration or Amendment.
>
> The constitution of a religious society, after it has been adopted or has been recognized as binding, can be changed or amended only in the manner provided therein, or by the rules or by-laws of the society."
>
> *Rottman v. Bartling,* 22 Neb. 375, 35 N. W. 126.

Syl. 3. Religious Societies—Change of Constitution—Notice.

> "Where a church has been organized, and a constitution adopted and signed by its members, under which the church has existed for a series of years, such constitution can be changed only in the manner provided therein, or by the rules or by-laws of such society; and where the constitution provides for a three-months notice of any proposed change in the constitution, a change effected without giving such notice is invalid, and of no effect."

The statutes or by-laws, the charter, and the provisions in the deed of the real estate of the plaintiff organization, and all its actions and conduct since its founding, indicate, unequivocally, the fundamental purpose to be connected with and under the supervision of a general or superior church organization—the Romanian Orthodox Church and Holy Synod thereof. Having once established the affiliation and attachment to this particular denomination, it must preserve the ecclesiastical connection with, and subordination to the superior bodies, as prescribed by the rules of the

superior bodies if it is to continue and maintain its status as a church of the Romanian Orthodox denomination. The plaintiff organization, or any of its dissident member parishes, could not declare its or their independence or autonomy in violation of the rules, discipline, and customs of the general or superior bodies and still maintain the status of a church of that denomination, as was done in the instant case by the defendants and their followers.

76 *Corpus Juris Secundum,* Religious Societies.

C. Severance of Relationship, page 789.

"Generally speaking, a local church which is a part of a denomination cannot secede in violation of the rights and rules of the denomination, or of its own charter provisions, and, where a society has once attached itself to a particular denomination, in order to maintain its status as a church of the denomination, it must preserve an ecclesiastical connection with, and subordination to, the superior bodies, as prescribed by the rules of the superior bodies. Where the church is an integral part of the general church organization and has a direct inherent and organic interest in that body, it is forever a part of it, except where its rights are forfeited by a regular judicial decree or connection is broken by mutual consent of the society, even though it has voted, in favor of secession, still remains a part of the larger body until the secession has been acted on by the larger body in conformity with its own rules. Where the Charter embodies the original purpose of the incorporators to become connected with a superior church organization, and such connection is made it cannot later be dissolved by action of the majority. * * * Where a connection is once established between a society and a superior church organization, it is presumed, in the absence of proof to the contrary, to have no right to sever the connection, except by mutual consent."

The fact that the defendants herein could not declare their independence or autonomy and still purport to be churches of the Romanian Orthodox denomination is specifically provided for in Article 14, page 25 of the 1936 statutes or by-laws of the plaintiff organization. In the Romanian Orthodox Church, a prelatical type of religious organization, power does not ascend from the laity or parish to the priest; it descends from above—from the Holy Synod (Prelates) to the Bishop and through him to the subordinate ministry. When the action of any organization must be reported to a higher official or body for approval, that higher official or body, of necessity, has the right and the power to approve or disapprove that action. Under the rules, discipline and customs of the plaintiff organization, all the actions taken by it through its various organs must be approved by the bishop and ultimately by the Holy Synod. (R. 520, 521.) The actions whereby the defendants, acting in the name of the plaintiff organization, claim to have achieved a degree of autonomy which denied the right of the Holy Synod to select and consecrate a bishop for and with authority over the plaintiff organization, are void and illegal as being in contravention of the laws of the plaintiff organization and the Romanian Orthodox Church.

Since the plaintiff body did not enact any changes to its laws with the approval of the Holy Synod; therefore, as a matter of law, there have been no changes to the laws governing the plaintiff religious body.

2. Whether the plaintiff, Bishop Andrei Moldovan, had been elected, consecrated, and invested a bishop in conformity with the by-laws, canon laws, discipline and custom of the Romanian Orthodox Missionary Episcopate in America, and therefore the bishop of said Episcopate?

The lower court answered this question "No."

Appellant contends that it should be answered "Yes."

The manner in which the relation of a bishop is created depends upon the particular rules, laws and discipline of the plaintiff organization and the Romanian Orthodox Church. The plaintiff organization was organized and incorporated as a religious society in conformity with the canons, discipline and faith of the Romanian Orthodox Church. Under the laws and discipline of this particular denomination, the election or selection and consecration of a bishop can be accomplished only by a group of prelates of this particular denomination—a House of Bishops (Holy Synod)—inasmuch as a bishop in Eastern Orthodox Church of which the Romanian Orthodox Church is a part, must obtain Apostolic Succession, which can only be given by prelates in the particular church who already have apostolic succession. The determination and decision as to whether a particular clergyman is qualified and worthy to receive the divine Apostolic Succession can be made only by those who are trained and thoroughly familiar with such matter—those prelates in the particular church who have this Apostolic Succession—and not by laity who could not be expected to determine upon such a highly peculiar matter. This is an ecclesiastical matter which lies exclusively within the domain of high prelates of the church. (R. 110, 111, 113, 114, 115, 116, 118, 119, 120, 121.) The very essence of the plaintiff organization as a

Romanian Orthodox religious denomination is that it must, in the first instance, conform to the canon laws, discipline and custom of the Romanian Orthodox Church. This it has done and reaffirmed throughout its existence. Furthermore, the reason why the statutes by which the plaintiff organization is governed and any changes thereto must be approved by the Holy Synod is to assure that it shall function in complete conformity with the canons, ritual and discipline of the Romanian Orthodox Church. Any departure therefrom would be heretical and schismatic —contrary to the laws and practice of the church. Furthermore, to assure the canonical ties and continuity of the plaintiff organization, there was provided in its by-laws of 1936 the provision that the election and consecration of a bishop for this organization is to be accomplished by the Holy Synod. This provision Article 6 page 20, has never been amended or modified with the approval of the Holy Synod. It was in full force and effect in the year 1950 when the plaintiff, an American citizen, was elected and consecrated by the Holy Synod, and invested by the Patriarch of the Romanian Orthodox Church, as bishop and reigning prelate of the plaintiff organization. The individual plaintiff was elected and consecrated by the Holy Synod and invested by the Patriarch as bishop and reigning prelate of the plaintiff organization (R. 307, 308, 556, 558, 559), and the evidence throughout is uncontroverted on this point. Contrary to the position taken by the defendants, the election of a bishop for the plaintiff organization lies exclusively with the Holy Synod. It is not the contention of the plaintiff that he was elected by a church congress here in the United States, but contrarily, that such a congress has no authority to elect a bishop in accordance

with the laws of the plaintiff organization and the Romanian Orthodox Church. The election, consecration and investiture of the plaintiff bishop having been accomplished in accordance with the laws of the plaintiff organization and the Romanian Orthodox Church, the plaintiff prelate is the regularly constituted head of the plaintiff religious organization. (R. 436, 437, 438.) Church organizations have the right to establish tribunals to decide questions arising within the organization. The final judgments and decisions of the governing authority of a general church organization having rules for the government and conduct of its adherents, parishes and officers, as far as they relate exclusively to church affairs and church government, are binding on the local churches and parishes. Courts will review such judgments and decisions only for the purpose of determining their regularity or adherence to the laws and usages of the general organization. This is not so because the law recognizes any authority in such a body to make a decision determining civil rights, but because the parties have made it the "arbiter" on any questions that may arise. *Russian-Serbian Holy Trinity Church of St. Paul vs. Kulik*, 279 N. W. 364, 202 Minn. 560; *Ramsey v. Hicks*, 44 Ind. App. 514, 87 N. E. 1100.

The election and consecration of a bishop is an ecclesiastical matter, to which, be their answer right or wrong, the ecclesiastical superiors have the final answer. Civil courts, if they should be so unwise as to attempt to supervise their judgments on matters which come within their jurisdiction, would only involve themselves in a sea of uncertainty and doubt, which would do anything but improve either religion or good morals. *Baxter v. McDonnell*, 155 N. Y. 101; 49 N. E. 671.

35 *Ohio Jurisprudence,* Religious Societies.

IX Ecclesiastical Tribunals.

#23 In General.

"The government of every religious society provides tribunals to determine matters concerning its welfare, the rights, duties and powers of members, officers, and pastors, and to pass upon questions of faith, dogma, etc. The power of courts to adjudicate disputes between warring church factions is limited to an examination of the rules of the church to ascertain the church law and if that is not in conflict with the law of the land, to protect the parties under the law they have made for themselves."

The election, consecration and investiture of the individual plaintiff, Bishop Andrei Moldovan, as an official act of the highest Romanian Orthodox Church authority, was a decision on a denominational matter of internal church government, and as such, is final and absolutely binding on the civil courts of this country. In the case of *Watson v. Jones,* 13 Wallace 679, 727, 729, Mr. Justice Miller, in stating the opinion of the court said at page 727:

> "In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of authority is that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them."

Plaintiff contends and strongly feels that in view of the authorities cited herein, the decision of the trial court enjoining the individual plaintiff from acting as a priest or bishop of the plaintiff organization is an unlawful in-

trusion into the internal affairs of a religious body, contrary to the first principles of American Government, violative of the First Amendment's guaranty of freedom of religions from such governmental interference, and in conflict with controlling decisional law as set forth in *Watson v. Jones,* 13 Wallace 679.

3. Whether the plaintiff, Bishop Andrei Moldovan, is entitled to the possession, use, control, or occupation of the real and personal property of the Romanian Orthodox Missionary Episcopate in America now in the possession and/or under the control of the defendants?

The lower court answered this question "No."

Appellant contends that it should be answered "Yes."

The authorities are generally agreed that where a religious body becomes divided, and the right to the property is in conflict, the civil courts will consider and determine which of the divisions submits to the church, local and general. This group is entitled to the property. In determining which group has maintained the correct doctrine, the findings of the supreme ecclesiastical tribunal of the denomination in question is binding upon the civil courts. In this particular case, the evidence clearly establishes that the individual plaintiff and plaintiff organization is affiliated with and under the canonical authority of the Romanian Orthodox Church and Holy Synod thereof, its supreme authority. This is substantiated by the statutes or by-laws of 1936, at which time the plaintiff organization took its final form and had its first bishop; the provisions in the deed to the real estate in Grass Lake, Michigan; and the Articles of Incorporation which have never been amended.

In the case of *Watson v. Jones,* 13 Wallace 679, at page 722, Mr. Justice Miller delivering the opinion of the

court classified ecclesiastical bodies, so far as property rights were concerned, under three general heads. They are as follows:

> "1. The first of these is when the property which is subject of controversy has been by deed or will of the donor, or other instrument by which the property is held, by the express terms of the instrument devoted to the teaching, support or spread of some specific form of religious doctrine or belief.
>
> "2. The second is when the property is held by a religious congregation, which by the nature of the organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority.
>
> "3. The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization."

The real estate known as the "Vatra," in Grass Lake, Michigan was acquired by way of trust for the use and promotion of certain specific religious purposes and was taken in the name of the plaintiff organization, and the then Bishop, Policarp Morusca, as the reigning prelate invested by the Holy Synod, or his successors as such in office, jointly, in order to assure the fulfillment of the original purposes of the plaintiff organization. It is provided in the deed to said premises as follows: "It is further agreed that the Holy Synod of Romania, as well as the Romanian populace of America, have given funds for the purchase of the above described premises, and to insure the fulfillment of the objects of the original articles of incorporation. It is intended that the corporation shall

act only as trustees for and in behalf of the Romanian populace of America and that neither they as such trustees, the episcopate council, nor the church congress, shall have the right to alter the purposes or the objects contained in the original articles of incorporation of the Romanian Orthodox Missionary Episcopate, nor shall they have the right to sell, lease, assign, transfer, incumber, nor do any act affecting the proprietary rights of the above described premises without the express consent and authorization of the Holy Synod of Romania through its lawfully constituted representative now being His Grace Policarp P. Morusca, or his successor, as such, in office. It is likewise agreed that the restrictions as to the corporate grantee in like manner applies to the Holy Synod grantee and it is the intent that jointly the grantees may do all necessary acts that any person holding title in fee may or could do, but that neither have any possessory or ownership rights without the consent of the other."

The plaintiff organization, and the individual plaintiff, Bishop Andrei Moldovan, as reigning prelate and legally constituted representative of the Holy Synod, hold title jointly to the real estate "Vatra" at Grass Lake, Michigan, and other property in trust for the purposes of the plaintiff organization. The "Vatra" is the See Church and seat of the episcopate, and, accordingly, the plaintiff, Bishop Andrei Moldovan, as the duly constituted bishop, is entitled to possess and occupy that seat as his See Church. This is further affirmed and strengthened in the articles of incorporation of the plaintiff organization, wherein it is provided as follows:

> "Fourth, the member parishes of said episcopate shall worship and labor together according to the discipline, rules and usage of the Romanian Orthodox Church in the United States of America as from time

to time authorized and declared by the Holy Synod of the Autokephalos Romanian Orthodox Church of Romania, its Supreme Canonical Authority.

"Fifth, organized to preserve and secure the unity of worship by abiding in the unfeigned doctrines and tenets of the Eastern Orthodox faith and in the traditions and usages of the Romanian Orthodox Church, said episcopate as ecclesiastical corporation: (a) Shall manage, direct, govern, and control the policies and interests of its component member-parishes according to the severally ratified by-laws enacted by its church congress held in 1932, October 30, at Cleveland, Ohio, and approved by the Holy Synod on October 8, 1936; (b) shall create and upkeep on its own real estate known as 'Vatra Romaneasca,' the established permanent seat of said episcopate, out of the income of the land, * * *" etc.

In the case of *Smith v. Pedigo,* 145 Ind. 389, 33 N. E. 786, the Court held that property given to a church is held in trust, which no member or association, less than the whole, may divert or change.

That the property of the plaintiff organization has been dedicated for specific religious purposes is beyond dispute. The by-laws approved by the Holy Synod in 1936, and which have been referred to as the 1936 statutes or by-laws, clearly set out the powers and duties of the individual plaintiff, as bishop, with regard to the property of the organization. Article 174 thereof reads as follows:

"After the Bishop's seat is occupied, the economic section delivers and surrenders to the new Bishop, with inventory, upon his entering into the seat, all the mobile and immobile (real and personal) property and all the precious church objects and library."

Furthermore, all decisions of the subordinate administrative bodies of the plaintiff organization must be submitted to the Bishop for approval.

The defendants refuse to acknowledge the authority of the original denominational organization. In July, 1951, during the pendency of this cause, defendants, along with some of their dissident followers, at a meeting held by them in the name of the plaintiff organization, decided and did sever all connections with the Mother Church and Holy Synod thereof, administratively, spiritually, and canonically, and reversed the right to conduct their affairs without authority of the Romanian Orthodox Church or the Holy Synod. (R. 25, 27, 45.) This constituted a complete departure by the defendants from the original purposes of the plaintiff organization and, in effect, caused a secession by them. The defendants in seeking to exclude the plaintiff, Bishop Andrei Moldovan, from possession of the real estate and seat of the episcopate "Vatra," are acting under the control of and in the interest of a dissident or schismatic group of Romanian Orthodox individuals and parishes who refuse to recognize the authority and primacy of the Patriarch and the Holy Synod of the Romanian Orthodox Church. (R. 120.) Bishop Andrei Moldovan's possession of the "Vatra" is not subject to control by any civil authority or by any judgment of a civil court, and no civil court may decree to the independent or non-conformist group, as defendants, possession of that "Vatra," hostile to the authority and action of the Mother Church and Holy Synod thereof. *Watson v. Jones*, 13 Wallace 734.

Borgman et al. v. Bultema, et al., 182 N. W. 91; 213 Mich. 684:

> "Syl. 1. Property dedicated to the use of a religious denomination cannot be diverted to the use of those who depart from its faith, but remains for the use and benefit of those adhering thereto, though they constitute a minority."

Bakos et al. v. Takach, 14 Ohio Ap. 370:

"Property having been dedicated by way of trust for the use and promotion of a certain specific religious organization, a court of equity will enjoin the majority of the members of such religious organization from changing the organization so as to effect an avowed change of denomination relations, which would amount to a turning over of the property to another separate distinct denomination and thus work an abandonment of the original purpose of the society."

In the case of *Methodist Episcopal Church v. Wood*, 5 Ohio 283, where certain members of the Methodist Episcopal Church seceded therefrom, and brought an action to compel a division of the corporate property, their right to recover was denied.

"Syl. 5. The seceders from the Methodist Episcopal Church who have organized a separate conference and reject the office of bishop, are not entitled to any portion of the property of the society from which they seceded."

and in the same case, the court, at page 288, said:

"The efforts of the dissatisfied members are not directed within the church to effect a reformation in its government and discipline, according to the usage of the society, to conform it to their wishes. They moved off in a body of several hundred and associated themselves, not as the Methodist Episcopal Church, but, as is now claimed for them in argument, a persecuted body forced from the church by the intolerable tyranny of its government. The body of persons thus separated agreed upon articles of association, differing essentially from the rules governing the Methodist Episcopal Church. In this state of facts, it is difficult to perceive the ground on which the claim is now advanced, that they remain the Methodist Episcopal Church. Those remaining in that church have con-

tinued to exercise the corporate functions in conformity with the act of incorporation, and against a body who have acted openly upon other principles, and continued to do so until this time, they must be held in this action, the corporation."

The case of *Daniel M. Shoup, et al., Ex parte,* 9 Ohio Decisions Reprint 648, further supports the position that defendants' declaration of independence and autonomy from other superior control and Holy Synod amounts to a secession, thereby abandoning all claims to the property of the regular church as represented by the individual plaintiff. The court in said case stated at page 661:

"The case of Knishern v. Lutheran Church, 1 Sand, 439, is the most exhaustive discussion of these subjects (religious rifts) to be found in the books, and in its conclusions fully sustains the position we have taken as well as of the other cases cited. In that case a division occurred and a separate synod was organized. The seceding party abandoned the Augsburg Confession of faith and adopted a constitution for the government of the synod containing a new declaration or confession of faith. By this constitution it was 'that the church council is independent of any synod or other superior control; thereby making its decisions final and conclusive, and depriving the members of the right of appeal to the Synod or General Synod guaranteed by the usages and constitution of the Evangelical Lutheran Church.' It was easy to see that such a body was not the regular church."

The same principle applies in this case. The fact that these defendants did not move off in a body, but sought to retain possession of the church properties in the name of the plaintiff organization, does not change the rule. All testimony shows that they have seceded from the plaintiff organization, and as such seceders have no right to the property of the church.

We pause to remark on the similarity between the present case and *Watson v. Jones, supra.* In the *Jones* case, a controversy over slavery split the Presbyterian Church in Kentucky in the 1860's; in the instant case, dissension over continued control by the Holy Synod of the Romanian Orthodox Church played its part in the internecine warfare which broke out among the American members of the Romanian Orthodox Church. A faction withdrew from the central control in the Presbyterian Church; defendants faction here divorced themselves from their supreme authority, the Holy Synod and Patriarch. In *Watson v. Jones,* the Supreme Court, holding the Presbyterian controversy to be "a case of division or schism in a church," 13 Wallace at page 717, as is surely true of this instant case, made the classic statement of law which runs from page 722 to the end of the long opinion. The holding as between the dissenters and the central organization was summarized thus:

> "They (the schismatics) now deny its authority, denounce its action, and refuse to abide by its judgments. They have since joined themselves to another totally different, if not hostile, to the one which they belonged when the difficulty first began. Under any of the decisions we have examined, the appellants, in their present position, have no right to the property, or to the use of it, which is the subject of this suit" at page 734.

Watson v. Jones, contrasting American with old world systems, page 728 et seq. of 13 Wall., says that "In this country the full and free right to entertain any religious principle" finds expression in the American rule of law that the determinations of the tribunals and judicatories of a centrally organized church are absolutely binding on the civil power. It is no answer that there is here in dispute property rights—when rights of property are dependent

upon the questions of doctrine, discipline, or church government—the civil courts will treat the determination made in the highest tribunal within the church as controlling.

In the freedom of conscience and the right to worship allowed in this country, the defendants and their followers undoubtedly possessed the right to withdraw from the plaintiff organization, with or without reason. But they could not take with them, for their own purposes, the property dedicated to and conveyed for the worship of God under the discipline of the Romanian Orthodox Church, nor could they prevent its use by those who chose to remain in the church, true to its discipline and authority, and who represent the regular church organization. It is undisputed and admitted by the defendants that the plaintiff organization was under the canonical and spiritual authority of the Holy Synod, prior to this suit, and that in July of 1951, during the pendency of this suit, the defendants and a group of their followers held a conference or congress whereby they adopted resolutions declaring their independence of the Holy Synod and Romanian Orthodox Church and reserved their right to conduct all their affairs—administrative, spiritual, and canonical—without authority of or interference by the superior body, the Holy Synod. By this action that the defendants are independent of the Holy Synod, thereby making their decisions final and conclusive, and depriving the members of the right of appeal to the Holy Synod as guaranteed by the usages and laws of the Romanian Orthodox Church, it is easy to see that the defendants do not represent the regular church. The title to the church property herein is in that group, as represented by the individual plaintiff and which is acting according to its laws and authority of the Holy Synod. This right is to be determined by the ec-

clesiastical laws, discipline and usage which were accepted among them before the suit began. The defendants by not conforming to the laws and authority of the Holy Synod have become independent and thus have abandoned all claims to the property.

In aid of clarity, we set down these indisputable and substantiated propositions:

1. The plaintiff organization, the Romanian Orthodox Missionary Episcopate in America, is a part of a general or centrally organized church under whose laws, discipline, and customs the Holy Synod and the Patriarch thereof, as its supreme head, have the exclusive power of electing, consecrating and investing a bishop for the plaintiff episcopate.

2. Plaintiff, Andrei Moldovan, was elected and consecrated by the Holy Synod and invested by the Patriarch of the Romanian Orthodox Church as bishop for the Episcopate (Diocese) of North and South America, and that appointment is now in effect.

3. The plaintiff organization, the Romanian Orthodox Missionary Episcopate in America, a Michigan corporation, and the individual plaintiff, Andrei Moldovan, as reigning prelate and legally constituted representative of the Holy Synod, hold title jointly to the real estate known as "Vatra" in Grass Lake, Michigan, and other property in trust for the religious purposes of the plaintiff body.

4. The "Vatra" in Grass Lake, Michigan, is the See Church and seat of the plaintiff episcopate (diocese), and, accordingly, plaintiff, Andrei Moldovan, as the duly constituted bishop, is entitled to possess and occupy that seat as his See Church.

5. The election, consecration and investiture of Bishop Andrei Moldovan, as an official act of the highest Romanian Orthodox Church authority, The Holy Synod, was a decision on a denominational matter of internal church government, and as such is final and absolutely binding on the civil courts of this country.

6. The defendants in seeking to exclude plaintiff, Bishop Andrei Moldovan, from possession of the "Vatra" are acting under the control of, and in the interest of a dissident or schismatic group of Romanian Orthodox individuals and parishes, which group refuses to recognize the primacy of the Patriarch and authority of the Holy Synod of the Romanian Orthodox Church.

7. Bishop Andrei Moldovan's possession of the "Vatra" is not subject to control by any judgment of a civil court, and no civil court may decree to the independent or non-conformist group of defendants, possession of that real estate "Vatra," hostile to the authority and action of the Mother Church.

8. Under our law, religious denominations such as the world wide Romanian Orthodox Church, have denominational control over their constituent churches, parishes or dioceses, and the constituents cannot escape such control by secession.

9. Congregations or parishes of a general ecclesiastical organization do not have the power to declare their independence in violation of the laws, usages and customs of the general organization.

RELIEF.

Appellant contends that he has maintained the allegations of his amended complaint that he represents the regularly organized body of the church and is its duly constituted representative, and, as such, he is entitled to the relief prayed for in his amended complaint. Therefore, appellant contends that the judgment of the lower court should be reversed.

Respectfully submitted,

JOHN R. VINTILLA,
OWEN C. NEFF,
ANDREW W. KOPS,
Attorneys for Plaintiff-Appellant.

APPENDIX.

Civil Action No. 27,916.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION.

THE ROMANIAN ORTHODOX MISSIONARY EPISCOPATE OF AMERICA,
through his Grace Bishop Andrei Moldovan,
Plaintiff,

vs.

IOAN TRUTZA, *et al.,*
Defendants.

DOCKET ENTRIES
from December 19, 1950 to October 21, 1952.

12/19/50	Complaint filed.
12/19/50	Motion of plaintiff for preliminary injunction filed.
12/19/50	Summons issued. 5 copies of summons to Marshal.
12/19/50	Bond for costs under Rule 7(b) (1) filed. $250. (New Amsterdam Casualty Co.)
12/19/50	Order setting hearing on motion for preliminary injunction Jan. 10, 1951 at 10:00 A. M. filed, Freed, J. Noted 12/19/50, 6 true copies of Order to Marshal.
12/26/50	Summons retn. & filed. Served defts. 12/20/50. Fees $10.60.
12/26/50	Marshal's return on order filed. Served defts. 12/20/50. Fees $10.00.
1/8/51	Answer of Romanian Savings and Loan Co. filed. Copy mailed 1/8/51.

1/9/51	Stipulation and order that Ioan Trutza, James Suciu and Viorel D. Trifa may file Answer by January 30, 1951 filed. Freed, J. Noted 1/9/51. Notice waived.
1/9/51	Answer of The Cleveland Trust Co. filed. Copy delivered.
1/9/51	Subpoena retn. & filed. Served John J. Sibisan 1/9/51. Fees 90¢.
1/10/51	Hearing on motion for preliminary injunction begun but not concluded; adjourned until 10: 00 A. M. tomorrow, Freed, J. Reporter, Gabriel.
1/11/51	Hearing on motion for preliminary injunction continued but not concluded; adjourned until 10: 00 a.m. tomorrow. Freed, J. Reporters Gabriel and A. V. Jarvela.
1/12/51	Hearing on motion for preliminary injunction continued but not concluded; adjourned until 10:00 A. M. tomorrow. Freed, J. Reporters Gabriel and Jarvela.
1/15/51	Upon application of plaintiff motion for Preliminary Injunction dismissed; plaintiff granted leave to file amended complaint by 3/16/51; defendants may file answers by 4/5/51 filed. Freed, J.
1/15/51	Plaintiff's exhibits 1 and 5 filed. Ret. to counsel 1/15/51.
1/15/51	Defendant's exhibit B filed. Ret. to counsel 1/15/51.
1/15/51	Order that motion for preliminary injunction is dismissed and plaintiff granted leave to file amended complaint by 3/16/51, defendants may file answers by 4/5/51 filed. Freed, J. Noted 1/16/51. Copies mailed to counsel 1/16/51.
3/16/51	Amended Complaint filed. Copy mailed 3/16/51.

4/4/51 Motion of The Cleveland Trust Co. for dismissal filed. Copy served 4/4/51.

4/5/51 Answer and Counterclaim for interpleader of Ioan Trutza, James V. Suciu and Viorel D. Trifa filed. Copy mailed 4/5/51.

4/13/51 Answer of The Romanian Orthodox Missionary Episcopate in America to the amended complaint of plf. Andrei Moldovan; Answer of The Romanian Orthodox Missionary Episcopate in America to the Counterclaims for Interpleader of the defs. Ioan Trutza, James V. Suciu and Viorel D. Trifa and cross-claim of The Romanian Orthodox Missionary Episcopate in America filed. Copy mailed 4/13/51.

4/13/51 Appearance of The Romanian Orthodox Missionary Episcopate in America and Motion for temporary restraining order filed. Copy mailed 4/13/51.

4/13/51 Motion for preliminary injunction filed. Copy mailed 4/13/51.

4/25/51 Order, effective 11:00 A. M. Apr. 24, 1951 and continuing until disposition of motions for temporary restraining order and preliminary injunction, enjoining plaintiff, Andrei Moldovan, from publishing any organ representing itself as official organ of Romanian Orthodox Missionary Episcopate in America and newspaper "Solia" is to cease publication as such; plaintiff, Andrei Moldovan, to have half possession of the mansion at The Vatra, the remaining property, real or personal, belonging to Romanian Missionary Episcopate in America to remain from encroachment by said Andrei Moldovan, his agents, etc.; defendant Episcopate enjoined from publishing in "Solia" comments about plaintiff or within case filed, Freed, J. Noted 4/25/51. Notice waived.

4/26/51 Stipulation & Order granting plaintiff leave to move or plead by May 12, 1951 filed, Freed, J. Noted 4/26/51. Notice waived.

5/12/51 Motion to strike counter-claim for interpleader and to dismiss cross-claim of Romanian Orthodox Missionary Episcopate in America filed. Brief attached. Copy mailed.

5/22/51 Answer brief of Defts. Trutza, Suciu, Trifa and The Romanian Orthodox Missionary Episcopate in America, in opposition to Motion to strike counter-claim etc. filed. Copy mailed 5/23/51.

5/22/51 Motion of The Romanian Orthodox Missionary Episcopate for Andrei Moldovan to show cause why he should not be punished for contempt filed.

5/22/51 Affidavit of John Trutza in support of Motion for order to show cause filed.

5/23/51 Order directing Andrei Moldovan to show cause on June 4, 1951 at 10:00 A. M. why he should not be punished for contempt of Court filed. Freed, J. Noted 5/23/51.

5/29/51 Answer of plaintiff to order to show cause filed. Copy mailed 5/29/51.

5/31/51 Endorsed order granting leave to file reply brief, Freed, J. (Parties present in Court.)

5/31/51 Reply brief of plaintiff filed. Copy mailed.

6/1/51 Affidavit of Glen B. Cameron re service of Order, motion and affidavit of Rev. John Trutza and Exhibit A filed.

6/4/51 Hearing on motion for citation for contempt begun and concluded; finding of guilty; judgment reserved until cause is heard on merits; motion of Cleveland Trust Co. sustained unless bond in $2500 is furnished by plaintiff within 24 hours, Freed, J. Noted 6/4/51. Reporter Jarvela.

6/4/51 Defendant's Exhibits 1, 2 & 3 filed.

6/12/51 Order directing defendant Cleveland Trust Co. to release sum of $2548.51 deposited subsequent to Dec. 20, 1950 to plaintiff; sum of $356.32 on deposit Dec. 20, 1950 to be held subject to further order if plaintiff on or before June 15, 1951 at 4:00 P. M. files bond in that amount or more, failure of plaintiff to file said bond, cause dismissed as to Cleveland Trust Co. at plaintiff's costs filed, Freed, J. Noted 6/12/51. Notice waived.

6/15/51 Motion of plaintiff to dismiss with brief filed. Copies mailed 6/15/51.

6/25/51 Motion of The Romanian Orthodox Missionary Episcopate for Andrei Moldovan to show cause why he should not be punished for contempt filed. Copy mailed 6/25/51.

6/25/51 Affidavit of Rev. John Trutza in support of Motion for order to show cause filed. Copies served 6/25/51.

6/27/51 Brief in opposition to motion to dismiss filed. Copy mailed 6/27/51.

9/14/51 Request for trial filed.

12/3/51 Motion of The Romanian Orthodox Missionary Episcopate in America for order to show cause for contempt and affidavit filed. Copy mailed 12/3/51.

1/10/52 Motion of the Romanian Orthodox Missionary Episcopate in America for order to show cause in contempt and affidavit filed. Copy mailed 1/10/52.

4/4/52 Motion of defendant Trifa for substitution of party defendant filed. Copy mailed 4/4/52.

4/4/52 Motion of defendant Romanian Orthodox Missionary Episcopate in America for order to show cause with affidavit filed. Copy mailed 4/4/52.

4/11/52	Brief on opposition to motion of Viorel D. Trifa filed. Copy mailed 4/11/52.
6/23/52	Trial to Court begun but not concluded; adjourned until 10:00 A. M. tomorrow, Freed, J. Reporters Gabriel & Jarvela.
6/24/52	Trial to Court resumed but not concluded; adjourned until 10:00 A. M. tomorrow, Freed, J. Reporter Gabriel.
6/25/52	Trial resumed but not concluded; adjourned until 10:00 A. M. tomorrow, Freed, J. Reporter Jarvela.
6/26/52	Trial resumed but not concluded; adjourned until 10:00 A. M. tomorrow, Freed, J. Reporter Jarvela.
6/27/52	Answer of Romanian Orthodox Missionary Episcopate of America, etc. to the cross-claim filed. Copy served 6/27/52.
6/27/52	Trial to the court resumed; but not concluded; adjourned until 10:00 A. M. Monday; Freed, J. Reporter Jarvela.
6/30/52	Trial to the court resumed; but not concluded; adjourned until 10:00 A. M. tomorrow, Freed, J. Reporter Jarvela.
7/1/52	Trial to the Court resumed and concluded; taken under advisement; argument & briefs; Freed, J. Reporter Jarvela.
7/1/52	Pltf's exhibits 1 & 2; 4, 6 thru 11, 12A thru 14, 16 thru 18 filed.
7/1/52	Deft's exhibits A thru H, J & K, P, S thru W, Z, AA thru DD, NN thru RR filed.
7/1/52	Order granting motion of defts. to make John J. Sibisan an additional party deft.; further ordered that defts' motion to amend the cross claim is granted and amendment to be filed by 7/2/52; further ordered that pltf's motion to amend the answer to the cross-claim is granted

and said amendment is to be filed by 7/2/52 filed. Freed, J. Noted 7/2/52. Copies to Counsel.

7/2/52 Amended cross-claim of deft. filed. Copy served 7/2/52.

7/2/52 Pltf's answer to the amended cross-claim of deft. filed. Copy served 7/2/52.

7/8/52 Finding for the Defendants; Complaint dismissed at Pltfs. costs; Injunction granted; Amended Cross-claim dismissed; Counsel to prepare entry, Findings & Conclusions, J. Freed.

7/8/52 Order that Plaintiff Andrei Moldovan pay a fine of $200.00 on Contempt charges, to be paid on or before July 15, 1952 at 12 noon. J. Freed. Noted 7/8/52; Notice mailed.

7/18/52 Findings of Fact and Conclusions of Law of defendant lodged. Copy delivered 7/18/52.

7/18/52 Draft of Order lodged by defendant. Copy delivered 7/18/52 (Withdrawn 7/22/52).

7/22/52 Draft of order lodged by defendant. Copy mailed 7/21/52.

7/23/52 Objections of plaintiff to defendants' proposed Findings of Fact and Conclusions of Law filed. Copy served 7/23/52.

7/23/52 Findings of Fact and Conclusions of Law of Plaintiff lodged. Copy served 7/23/52.

8/4/52 Findings of Fact and Conclusions of Law filed, Freed, J. Counsel notified.

8/4/52 Endorsed ruling overruling plaintiff's objections to defendants' findings, Freed, J. Copies of ruling to counsel.

8/4/52 Order permanently enjoining plaintiff, Andrei Moldovan, from representing himself as a priest or bishop of The Romanian Orthodox Missionary Episcopate in America, etc., from using

name "Solia" as title to publication, from using or controlling real or personal property of said Romanian Orthodox Missionary Episcopate in America; further order dismissing amended complaint at costs of plaintiff filed, Freed, J. Noted 8/4/52. Counsel notified.

8/8/52 Order overruling pltf's objections to defts' proposed draft of Findings of Fact & Conclusions of Law filed. Freed, J. Noted 8/8/52. Copies to counsel.

8/8/52 Notice of appeal by plaintiff filed. Copy mailed by Clerk to Wm. P. Strangward 8/8/52.

8/8/52 Motion of plaintiff for supersedeas and to suspend injunction pending appeal filed. Copy mailed 8/8/52.

9/8/52 Bill of costs filed. $392.50.

9/9/52 Motion of plaintiff for order extending time for filing transcript on appeal filed. Copy mailed 9/9/52.

9/11/52 Order overruling motion of plaintiff to stay injunction pending appeal and to fix supersedeas bond filed, Freed, J. Noted 9/11/52. Copies to counsel.

9/11/52 Stipulation & Order granting leave to file transcript of record on appeal in U. S. C. A. to Oct. 22, 1952 filed, Freed, J. Noted 9/11/52. Notice waived.

9/22/52 Appeal bond filed ($250.00) (New Amsterdam Casualty Co.).

10/17/52 Transcript of Proceedings filed. (Vol. I.)

10/17/52 Transcript of Proceedings filed. (Vol. II.)

10/17/52 All of original papers mailed to Clerk, U. S. Court of Appeals along with three photostatic copies of docket entries.

10/21/52 Acknowledgment of receipt of original papers (No. 11,743 in U. S. C. A.) filed.

PLAINTIFF'S AMENDED COMPLAINT.

(Filed March 16, 1951.)

(1) Plaintiff, having first obtained leave of court, files, this, his amended complaint in the above entitled action.

(2) The plaintiff is a bona fide resident of the State of Michigan and a citizen thereof. All of the defendants are residents and/or citizens of the State of Ohio. The amount in controversy exceeds the sum of Three Thousand Dollars ($3000.00) exclusive of interests and costs.

(3) The plaintiff for his cause of action says the Romanian Orthodox Missionary Episcopate of America, and is also known as the Romanian Orthodox Autonomous Episcopate of America, and that same as a relgious organization, incorporated under the laws of the State of Michigan, maintaining spiritual and canonical relationship with and under the jurisdiction of the Mother Church and Holy Synod thereof in Romania, and with its headquarters at the "Vatra," Grass Lake, Michigan.

(4) That the organization, nature, conduct and functions of said Episcopate is governed in accordance with the By-Laws for the Organization of said Episcopate, which By-Laws have been voted upon and approved by the Church Congress of said Episcopate, presided by His Grace Bishop Policarp Morusca, the predecessor Bishop and which was held at Youngstown, Ohio, on or about July 4, 1936.

(5) That said By-Laws are and have been since said date in full force and effect, and are and have been approved and recognized by The Holy Synod of the Romanian Orthodox Church.

(6) The plaintiff, His Grace Bishop Andrei Moldovan, is and at all times since November 12, 1950, has been the duly elected, ordained and qualified Bishop of said Episcopate, and is the legal and canonical successor to His Grace Bishop Policarp Morusca the predecessor Bishop of said Episcopate.

(7) The election and consecration of the plaintiff as Bishop has been effectuated in full conformity with the

canon laws of said Romanian Orthodox Church, and in full compliance with the By-Laws by which said Episcopate is governed, and more specifically Article 6 thereof, a translation of same being as follows:

ELECTION OF THE BISHOP.

"Art. 6. The head of the Romanian Orthodox Missionary Episcopate is its Bishop.

The Bishop shall be elected by The Holy Synod from among those men who are well qualified, who fulfill the conditions, laws and the By-Laws for the Organization of the Romanian Orthodox Churches.

He can participate at the meetings of the Holy Synod and other church bodies, with a deliberative vote in all matters which concern his jurisdiction. A special regulation, made by the Holy Synod, shall determine the area of activity and competence of this Bishop.

The missionary Bishop receives the Metropolitan Decree (Gramata), and canonical investiture from His Holiness The Patriarch of the Romanian Orthodox Churches, in order to be installed in the seat of the Bishop, through the delegate of Metropolitului Ungro-Vlahiei * * *"

(8) The plaintiff, as duly ordained Bishop of said Episcopate, conducts all the affairs of the Episcopate with the help of: (1) The Church Congress; and (2) the Episcopate Council.

(9) The plaintiff, as duly ordained Bishop of said Episcopate, is the President of the Church Congress, and also the President of the Episcopate Council.

(10) The Episcopate Council is the executive organ of the Church Congress and conducts the administrative-religious, cultural and financial affairs of the Episcopate, and is constituted of three sections, as follows: Administrative-Religious Section; Cultural Section; and Economic-Financial Section.

(11) The plaintiff, as Bishop, brings this action in behalf of said Episcopate, against these defendants, in accordance with Article 174 of the By-Laws which provide as follows:

> "Art. 174. After the Bishop's seat is occupied, the economic section delivers and surrenders to the new Bishop, with inventory, upon his entering into the seat, all the mobile and immobile (real and personal) property and all the precious church objects and library * * *"

(12) The defendants herein have in their possession and control the following property as assets of the hereinbefore described Episcopate:

(a) Funds in the approximate amount of thirteen-thousand dollars ($13,000.00) belonging to the Episcopate and which funds were raised for the purpose and allocated to the purpose of constructing a Monastery at the Vatra, Grass Lake, Michigan.

(b) General funds collected from the various parishes for the sole and exclusive use of the Episcopate in the approximate amount of Five Thousand Dollars ($5,000.00).

(c) A weekly newspaper known as "Solia," the official organ of the Episcopate, including good will, subscription list, office equipment, and any and all funds belonging to said newspaper together with any and all assets thereof.

(d) The annual issue of an almanac known as the "Solia Calendar" published annually including the good will, subscription list, and any and all funds belonging to said publication together with any and all assets thereof.

(13) The plaintiff Bishop, immediately after his elevation to the Bishopric and his seating therein, notified and made demand upon the defendants to turn over and surrender to him as the new Bishop of said Episcopate, pursuant to the By-Laws of said Episcopate, all of the aforementioned assets including the publication of the "Solia," but the defendants have neglected and refused to comply with this demand and have ever since November

25, 1950, unlawfully usurped the functions of the plaintiff in behalf of the Episcopate.

(14) The defendant, Ioan Trutza, disregarding the rights of this plaintiff, and in violation of the By-Laws of said Episcopate and the Canon Laws of same, has and is deliberately misrepresenting through the "Solia" and other means, that he is the President of the Episcopate Council and the head of said Episcopate, all which is inimical to the best interests of this Episcopate and to bring disrespect and discredit to the plaintiff as Bishop of said Episcopate.

(15) That ever since the plaintiff was elevated to the seat of Bishop, the defendants, Ioan Trutza and Viorel D. Trifa, in reckless disregard of plaintiff's rights and contriving maliciously to injure the plaintiff in his good name, fame and credit, and to bring him into public scandal, infamy and disgrace and to cause him to be believed to be guilty of being a tool of the communists and the chief of the Romanian communist propaganda movement, and for the purpose of permanently damaging plaintiff in his position and profession as a Bishop, have and are wilfully, falsely and maliciously publishing and are permitting to be published various and sundry statements concerning plaintiff by means of causing same to be published in the "Solia," which newspaper is the official organ of the Episcopate which this plaintiff heads, and is of a general circulation throughout the United States, Canada and other parts of the world, and further which newspaper the defendants are wrongfully withholding from the plaintiff's use and control as Bishop of said Episcopate.

(16) The defendants, Ioan Trutza, Viorel D. Trifa and James V. Suciu, their agents and employees, by reason of their usurpation and arbitrary exercise of power in behalf of said Episcopate, are expending monies without authority, and thus dissipating the funds wrongfully being withheld by them and properly belonging to said Episcopate for which this plaintiff is responsible as Bishop thereof.

(17) Plaintiff further says that irreparable harm is being done and will be done to the purposes of said Epis-

copate unless the defendants are permanently restrained and enjoined from printing, publishing and circulating the official newspaper and almanac "Solia," and from controlling and dissipating said funds by usurping functions and powers in behalf of said Episcopate.

WHEREFORE, the plaintiff as Bishop and on behalf of the Romanian Orthodox Missionary (Autonomous) Episcopate of America prays that this honorable court grant the following relief:

(1) That defendants, Ioan Trutza, Viroel D. Trifa and James V. Suciu, their agents and employees, be permanently restrained and enjoined from publishing, circulating, using or employing the name and title of "Solia" as part of or in connection with a newspaper, almanac or any other publication whatsoever.

(2) That the defendants, Ioan Trutza, Viorel D. Trifa and James V. Suciu be permanently restrained and enjoined from the use of any actions or conduct in any manner calculated to mislead or deceive the general public, and in particular members of the Romanian Orthodox Churches, into believing that said defendants or their agents are employed by or acting or functioning in behalf of or in the name of the Romanian Orthodox Missionary (Autonomous) Episcopate of America.

(3) That the defendants, Ioan Trutza, Viorel D. Trifa and James V. Suciu, shall make and render a true inventory to this plaintiff as Bishop of said Episcopate, of all the funds and property, both real and personal, in their possession and/or under their control belonging to said Episcopate; and also that they shall make and render to the plaintiff as Bishop a true accounting of all the expenditures incurred by them or at their discretion from the funds or property belonging to said Episcopate which came into their possession or under their control.

(4) That the defendants, Ioan Trutza, Viorel D. Trifa and James V. Suciu, shall deliver and surrender to the plaintiff as Bishop of said Episcopate, all the monies, funds, real and personal property, and any and all property in

their possession and/or under their control belonging to said Episcopate; and that said defendants be permanently restrained and enjoined from using and/or expending said property in any manner whatsoever.

(5) That the defendant banks shall be restrained and enjoined from turning over and surrendering to the defendants, Ioan Trutza, Viorel D. Trifa and James V. Suciu, any monies or other property in their banks belonging to said Episcopate, and further that they shall deliver and turn over to the plaintiff as Bishop all monies and property belonging to said Episcopate.

(6) And for such other and further relief as is just and equitable and proper in this case.

BROWN, NEFF AND VINTILLA,
By OWEN C. NEFF
and JOHN R. VINTILLA,
Attorneys for His Grace,
Bishop Andrei Moldovan.

EXCERPTS FROM TRANSCRIPT OF TESTIMONY.

As part of his case, plaintiff called as a witness, Right Reverend, Dionisizie Milivozevich, Bishop of the Serbian Eastern Orthodox diocese for the United States of America and Canada, as appears in the typewritten transcript of the record, beginning at page 110.

RT. REV. DIONISIZIE MILIVOZEVICH, who, being first duly sworn, testified as follows:

Q. State your name? A. My name is Dionisizie Milivozevich, Right Reverend Bishop of the Serbian Eastern Orthodox diocese for the United States of America and Canada and designated to take temporary charge of church affairs of all territory outside of Yugoslavia.

Q. Are you a citizen of the United States? A. Yes, I am.

Q. You stated you are a bishop of the Serbian Orthodox Church in this country? A. Yes.

Q. Will you tell the court in your own words how you became a bishop of the Serbian Church in this country?

Mr. Strangward: I object. That is a self-serving declaration, that he became a bishop.

The Court: He can recite how he became a bishop. It is a question whether it has any bearing on the issue in this case.

A. I became a bishop by election of the Bishop House of the Serbian Orthodox Church in Yugoslavia; that was in 1928; and I was consecrated as a bishop by His Holiness Serbian Patriarch Gabriel.

Q. And what was your status in the Church when you came to this country? A. They elected me and consecrated me for the Bishop, with duties of possession and taking spiritual care of our diocese here in America and Canada for Americans and Canadians of Serbian descent.

Q. Who appointed you for that position? A. This appointment was made by the Holy Synod and His Holiness Patriarch Gabriel of Belgrade.

Q. Now prior to your coming to this country did you hold any positions in the Church in Yugoslavia? A. I was two years Vicar-Bishop of His Holiness Patriarch of Bucharest. (error—Belgrade.) And before that I had previously a couple of positions as professor of canonical laws and other positions teaching in our seminaries and our schools in Yugoslavia.

* * * * *

Q. Now are you familiar with the canon laws and the ritual discipline of the Orthodox Church? A. Yes, I am.

* * * * *

Pages 113, 114, 115:

The Court: Now what is the connection of the Holy Synod of Belgrade and the Holy Synod in Bucharest, is there any connection between the two?

The Witness: Yes.

The Court: What is the connection?

The Witness: The connection is in teaching in the same discipline, in the same ritual, but not in jurisdiction, not in jurisdiction. Every national church has, according to the Holy Canons its own privilege to elect a bishop who heads some organization inside that country, and other churches couldn't get around in their church in a different name. There is one authority in the Roman Catholic Church,—that is the difference. We have one head for every nation, for every bishop no matter from which nation the bishops are. Then we are ruled by Holy Canon. Those Holy Canons are written by the ecumenical councils. The ecumenical councils are supreme courts composed of all bishops from all countries, from all states. They were gathered several times and made the denominational by-laws for all Orthodox churches, no matter for which nation; but they designated in Apostolic time that every nation has its own right to elect bishops inside of this nation, and to have a head, supreme head, patriarch, archbishop, metropolitan for that nation; and to have local national councils for small affairs in their own church. And no church could interfere in the affairs of that national church. For instance, I am elected Bishop in my own church, in my own nation. I couldn't go to elect a bishop for a Romanian church or for a Greek church, for instance. This is done by their own Bishops' House. This is done as the basis of general rules of general Holy Canons which are written for all churches, orthodox churches, but with the provision they may be done for each nation, separate among their own bishops in the same manner. One bishop could not be consecrated from one bishop. It should be three, or two, at least, two. The first canon, Apostolic Canon, and our first ecumenical council, has provided that two bishops, at least two, or three could ordain another bishop, but that should be done by the supreme head of that nation. That means by the Holy Synod, a Patriarch or Patriarch Metropolitan or Archbishop, how it is called, the head from that nation.

One bishop cannot be consecrated by anybody else, no matter who are the other persons. A bishop could be consecrated only by two bishops which have Apostolic, so-called Apostolic sanction, that means Apostolic succession. If I am ordained—

Mr. Strangward: Well, I object to that.

The Witness: I will finish in one sentence. The bishop who consecrated me, he should have consecration from one canonical bishop, and one regular bishop, who would consecrate canonically, and one who is Apostolic. So our church is called Holy Apostolic Church. If one bishop isn't consecrated by a bishop, he can't prove that he is consecrated by a canonical bishop, he is not called a bishop.

Q. And you say the canon laws for your church are the same as the canon law for the Rumanian Church? A. The same.

Q. Under those canon laws can people, laymen or anyone else, elect a party to become a bishop? A. No, No and No.

Page 118:

Q. As an expert can you state as to how a bishop or an individual is elevated as a bishop in a Rumanian Orthodox Church? A. The same as in the Serbian.

Q. How is that? A. The Bishop House is electing a Patriarch, the Holy Synod is consecrating him.

Q. Can anyone else in the Rumanian Church other than the Patriarch in the Holy Synod elect and consecrate a Bishop for the Rumanian Orthodox Church? A. No. In that church will be one, a united and one Rumanian Church.

The Court: State that again, that last part.

Q. Would you repeat that last part? A. For one church has a Serbian and has a Rumanian, is one united, not divided, not separate, two or three. No one can elect, nobody can consecrate a bishop for that church, for that people except the Holy Synod Bishop House and the Patriarch who is the head of this church.

The Court: Let me get that statement. If the particular church isn't separated, then you say a bishop can only be elected.

The Witness: Yes.

The Court: If it is separated different rules apply, is that correct?

The Witness: If for instance in the Russian Church, for instance in the Russian Church in America, any American Russian Church governed by metropolitan delegate, he has recognition as a bishop from the Patriarch in Moscow, and this is a separate church, it is under his jurisdiction, his own bishops, and he might elect a bishop for America without asking the Patriarch in Moscow.

The Court: Why is that?

The Witness: Because when a nation is bigger, when they like to have their own churches, they form, according to holy canon a separate church body.

The Court: That is because they have sufficient bishops for apostolic succession?

The Witness: Yes.

The Court: And that is why they can separate?

The Witness: Yes, and it happened, too, for instance the Greek Church in Athens, in Greece.

Q. Now, excuse me a minute, going back to the question what do you mean by separate—when you used that term? A. I mean separate when it is recognized by the Eastern Orthodox Church as under the church body. For instance, if our Serbian Church in America, like to have a separate body and from our Patriarch of Belgrade we may get or if we could get permission to be separate, to have a new church body, and permission to come from our Patriarch, from the Holy Synod in Belgrade, from the Bishops' House in Belgrade, so that in that case we have a right to elect our own bishop here, but not in this case.

Q. Now in order to separate under the canon laws, in order to separate from the Mother Church, must they have permission from the Holy Synod of that church? A. They must.

Q. Suppose they do not have permission from the Holy Synod and separate? A. In that case they are schismatic?

The Court: They are what?

A. Schismatic. In that case they are anathematized by their own Mother Church, under the canon laws.

The Court: Let me get that. There is a schism, as I understand?

The Witness: Yes.

The Court: If there is a schism then that group of that church that partakes of that schism is separated and autonomous and independent of the Mother Church?

The Witness: Yes. In this case if they would obtain the recognition of their church's head, such as the Patriarch, that group would be recognized canonically as a new church, but if not it is schismatic.

The Court: And if they are recognized do they have a right to conduct their own churches administratively, canonically and spiritually?

The Witness: Yes. But they must have recognition from their Mother Church, from their supreme church, from their Patriarch, from their Holy Synod.

Q. According to canon laws which govern the Rumanian Orthodox Religion, can you as the Serbian bishop of the group, or Serbian bishops elect and consecrate a Rumanian Orthodox Bishop? A. I couldn't do that without the permission of my Patriarch and the Holy Synod. Even I couldn't elect a new bishop for Serbian churches here without my Patriarch gives permission or Holy Synod's approval.

PLAINTIFF'S EXHIBIT 2 (In Part).
(Also Defendants' Exhibit C.)
By-Laws for The Romanian Orthodox Churches in America.

* * * * *

STATUS OF RIGHT OF THE EPISCOPATE.

ART. 1. The missionary Episcopate embraces all the Romanian orthodox christians on the territories of the occidental countries, the United States of North America, of Canada, and South America; is a constituent participant of the Romanian Church and preserves the spiritual and canonical unity with the Holy Synod and the organic alliance with the Romanian Orthodox Patriarchate and with the National Church Congress.

* * * * *

THE HOLY SYNOD.

ART. 3. The Holy Synod of the Romanian Orthodox Church is the most supreme authority pertaining to spiritual and canonical matters, and supreme forum concerning religious matters of what ever nature they may be, which in accordance with the laws and regulations enter within its competence.

THE NATIONAL CHURCH CONGRESS.

ART. 4. The central corporation representative for the Church as a whole of all the Romanians of the orthodox religion, in administrative, cultural, endowments and financial (trusteeships) matters, is the National Church Congress composed of six representatives of each eparchy (two clergymen and four laymen) delegated by the eparchial assemblies for a term of six years from among its members, or, from among other christians of the respective eparchy.

This Congress will have the power to establish, within the border of the laws and statute, by way of regulations, criteria obligatory to the whole Church.

The National Church Congress elects a Central Church Council, which is the supreme administrative organ for matters of the whole church, and also the executive organ of the Holy Synod and of the National Church Congress.

THE RIGHTS OF THE MISSIONARY EPISCOPATE.

ART. 5. In accordance with the canonic law and in conformity with the constitution of the country in which this Episcopate has religious jurisdiction, it regulates, conducts and administrates through its own organs and under the control of the Ungro-Vlahien Metropolitan, its own religious, cultural, endowments and financial (trusteeships) matters.

ELECTION OF THE BISHOP.

ART. 6. At the head of the Romanian Orthodox Missionary Episcopate stands its Bishop.

The Bishop will be elected by the Holy Synod, from amongst titled and well prepared men, who fulfill the conditions of the laws and statute of organization of the Romanian Orthodox Church. He may participate at the sessions of the Holy Synod and of the other religious corporations with deliberative vote in all matters concerning his jurisdiction.

A special regulation, prepared by the Holy Synod, will determine the circuit of activity and competency of this episcopacy. The missionary Bishop receives the metropolitan grammata and the canonical investiture from his Grace, the Most Blessed Patriarch of the Romanian Orthodox Church, so that he can be installed on the episcopacy throne by the delegate of the Metropolitan of Ungro-Vlahia.

THE CONSTITUTIVE SECTIONS OF THE MISSIONARY EPISCOPATE AND THEIR ORGANS.

ART. 7. The constitutive sections of the Episcopate are:

1. Parishes,

2. Archparishes (archpresbyteries),

3. Monasteries (as special religious institutions, with its canonical organization), and

4. The Episcopate, as the organization proper.

Each constitutive part of the missionary Episcopate has the right to regulate, conduct and administrate independently of any other constitutive part of the same rank, its affairs, and to participate through its representatives at the works of the superior constituent parts.

This right is exercised through constituted corporations:

A. In parishes through qualified members that compose the parish assembly (Art. 30-31).

B. In archparishes and Episcopate, through representatives of the clergy and the people, in proportion of ⅓ clergy and ⅔ laymen.

* * * * *

THE EXPENDITURES OF THE EPISCOPATE.

ART. 9. The expenditures for the maintenance of the cult, servants and institutions of the church, are reimbursed through funds created through annual contributions of the faithful, supporters of the parochial churches, administrated through the representative and executive organs of its different constitutive sections.

And for the sustenance of the central directing organs (Episcopate and Episcopate Council) a special fund for the Episcopate will be created, with the assistance of the Romanian Patriarchate, which will be augmented by the contributions of the parishes and from other sources.

* * * * *

RELIGIOUS TEACHINGS.

* * * * *

ART. 12. The legal authority of this Statute, prepared by legitimate representation of the parishes, congregated in the Church Congress, approved by the National Church Congress and by the Holy Synod of the Romanian Ortho-

dox Church and recognized by Charter by the Governments of the States, on whose territories the Romanian Orthodox Missionary Episcopate extends and activates—is and will remain obligatory, with the power of law, for all romanian orthodox christians, for the romanian orthodox churches and parishes of the respective states.

The Legal Authority of the Statute and Its Modification.

Art. 13. The dispositions enclosed in this Statute can only be modified by the Church Congress, especially summoned for this purpose, thirty days in advance, and with a majority of ⅔s of its members.

The modifying of the Statute is valid only with the approval of the Holy Synod.

The Encroachment of the Denomination.

Art. 14. The Romanian Orthodox Missionary Episcopate, recognized as a legal religious corporation, through the granting of the Charter, by the Government of the countries in which it activates for the strengthening of the Eastern Orthodox Faith, enjoying the protection of the authorities and by the exclusive right to represent the Romanian Orthodox Church,—forbids the dispersed parish or any other group, that did not enter into its organization and any other group, from the denominational usurpation of the "Romanian Orthodox Church," pursuing them on legal grounds, as a corporation, that maintain themselves through false representation.

* * * * *

The Episcopate.

Art. 128. The romanian orthodox Episcopate of America is the reunion of the archpresbyteries, monasteries and parishes on the territory of the United States of North America, of Canada and South America, lead by a Bishop, who is their canonical and legal leader, is in right and duty bound to work, direct and indirect, for the con-

ducting of the priests, and the promotion of the christian life of the faithful, parishes and monasteries.

ART. 129. The official title of the Episcopate is: "The Romanian Orthodox Missionary Episcopate of America."

ART. 130. For the time of vacancy of the Episcopal chair, the confessional affairs are fulfilled by the episcopate vicar, designated by the Ungro-Vlahien Metropolitan; and the current administrative matters by the eparchy council, guarding against any innovation or change and taking measures, in understanding with the vicar Bishop and with the Metropolitan, that the election of the new Bishop is to be made within the interval of three months.

ART. 131. The rights and duties of the Bishop are:

(a) to conduct the episcopate in the limitations prescribed by canon and rules in effect;

(b) to accord church dispensation to marriage, and to annul the church marriage, after the civil forum pronounced the divorce;

(c) is indebted to attend to the well-being of the religious life in the episcopate and the normal functioning of its organs.

* * * * *

(g) in serious instances, that claim an urgent intervention, can suspend in a preventive form, a guilty, from office, even before any investigation of his case is started, which investigation must be made at the most in 30 days.

ART. 132. The Bishop has a vicar, with academic titles or assimilate, named by him from the clergy of the monastic or lay priest order.

The circle of activity of the vicar is designated by the Bishop, therefore he can fulfill only religious services and businesses, which are entrusted by the Bishop.

ART. 133. The property of the Episcopate treasury is administrated by an economist, or a special commission, under the supervision of the Bishop. The economist will

be responsible of everything to the Bishop. He is indebted to preserve unblemished the property of the Episcopate treasury even during the vacancy of the Bishop chair.

* * * * *

ART. 135. It is forbidden by church canon that a Bishop or vicar to officiate deified services in another eparchy without the consent of the local Bishop.

ART. 136. The Bishop conducts the affairs of the Episcopate with the assistance of: 1) the Church Congress, and 2) the Episcopate Council.

THE CHURCH CONGRESS.

ART. 137. The Church Congress is composed of the parish priest and 2 laymen delegates of each parish within the combine of the Episcopate.

ART. 138. The delegates are elected in the parochial electoral session for a period of 3 years, after the form of electing the parochial council. At the electoral session, only members entitled, those that are not members are forbidden to participate.

ART. 139. All members of the parochial session written on the roll-call have the right to vote.

The priest and deacon do not vote at the election of the laymen delegates, nor for the archpresbytery session, nor for the Church Congress. The singers vote.

ART. 140. As a delegate in the church congress, any romanian orthodox christian can be elected who is inscribed on the electoral list of any parish in the Episcopate.

The persons elected must be from among those with a good name and manifested zeal for the interests of the church, unblemished of preference from among those who have given their moral and material support to the church. They can be re-elected.

ART. 141. The bureau of the electoral parochial session will eliberate, for the one elected a Mandate of the contents and following form:

MANDATE.

We the bureau of the electoral parochial session, of the romanian orthodox church, with the patron _____ _____ in the City of _____ of the romanian orthodox missionary Episcopate in America, state that this session, met on the day of _____ _____ in conformity with the circular order of the Episcopate No. _____ of _____ by which were summoned the electoral parochial sessions, for the election of delegates in the Church Congress, proceedings, conform statutory dispositions for the election and constituting the representatives and executive organs of the Episcopate, elected Mr. _____ as lay delegate of our parish in the church congress, was authorized to take part at the discussions of the congress and to contribute with his vote at the taking of the most salutatory decisions of superior church interest determined to regulate in a uniform and obligatory form the activity of the parishes in the Episcopate.

Given in _____ at _____

President of the session _____

Secretary of the session _____

Members of trust:

_____

_____

* * * * *

ART. 146. The church congress is convened once a year, convocated by the Bishop, and in case of vacancy, the Episcopate council, with 15 free days before the affixed date of convening.

In cases of necessity it can be convocated at any time in extraordinary session.

ART. 147. The president of the church congress is the Bishop (in case of hindrance or vacation, his vicar).

* * * * *

ART. 152. In the case when it is established that a member of the Church Congress is working against the interest of the Episcopate or of the romanian orthodox church, the congress, can take disciplinary action against him, excluding him from one or more sessions.

* * * * *

ART. 155. The church organs and all those persons, who would be guilty of all proven irregularities, in connection with the elections, will be punished in the measure of guiltiness, with disciplinary punishments, established by the Episcopate council, with the approval of the Bishop.

* * * * *

ART. 157. In the first session of the 3 year cycle, besides the matters taken in the order of the day, the church congress will proceed to the:

(a) electing of 3 representatives (1 clergyman and 2 laymen) besides, 1 clergyman and 1 layman as substitutes in the National Church Congress of the Romanian Patriarchate;

(b) electing of the episcopate council, 4 priests and 8 laymen;

(c) electing of 2 priests from among those best qualified, having the possibility and canonical and juridicial knowledge, to complete the church section, as the juridic forum in disciplinary actions.

ART. 158. All elections of persons is made by secret vote, with bulletins.

Delegates of the Missionary Episcopate in the National Church Congress, can be persons elected by it from among the members of the Congress or being from outside the Congress, but who are recognized as having special merits for the church.

Those elected received from the congressional bureau a mandate signed by the secretary and president of the bureau.

ART. 159. All the decisions that the church congress bring, are submitted to the Bishop for approval and then

are sent to the Episcopate council for registering and execution.

ART. 160. The decisions of the church congress which in the estimation of the Bishop can be harmful to the church or state will be sent with the motivated report of the Bishop, within the time limit of 1 month, for debate to the National Church Congress, which will decide upon them in the nearest session, to approve or annul.

* * * * *

ART. 162. The attributions of the Church Congress are the following:

* * * * *

(p) electing members to the Episcopate Council, to Bishop having the right of approval.

THE EPISCOPATE COUNCIL.

ART. 163. The Episcopate council is the executive organ of the Church Congress and conducts the administrative-church, cultural and endowments affairs of the entire episcopate.

The members are named Episcopate Counsellors and have a deliberative vote.

ART. 164. The council can be divided into various sections, namely; (a) church section, (b) cultural section and (c) managing section.

The number of counsellors will be a total of 12; 4 priests and 8 laymen and namely the priests constitute the church section and at the same time 2 will participate in the cultural section together with 4 laymen, and another 2 with 4 laymen, will form the managing section. Every Section will have a reporter, among whom the "Reporter counsellor" will be salaried, and the others will be honorary.

* * * * *

ART. 166. Both the reporter counsellors and those honorary are elected by the church congress, and approved by the Bishop.

* * * * *

ART. 168. The president by right of the council is the Bishop, in his absence, his vicar, and in his absence, the eldest counselor among the clergy of the church section.

* * * * *

ART. 174. After the occupation of the Episcopal throne the economic section surrenders to the new bishop, at his entrance on the throne, with inventory, all mobile and immobile property, ornaments and all valuable church objects and library.

THE JUDICIAL PROCEDURE.

ART. 175. The clergy subordinated to the Episcopate and all those entrusted with church functions of any nature as well as all christians of majority—for minors the parents or tutors are responsible—are submissive to the church discipline and can be called responsible for the following:

* * * * *

ART. 178. No functionary within the service of the church can resort to the civil court, before the pronouncement of the church judgment, in his case.

* * * * *

ART. 190. The bishop for religious deviations will be judged, in first and last instance, by the Holy Synod, and for ordinary offenses and politics by the competent civil court.

FINAL.

ART. 191. This Statute entered into full effect on the day of July 4, 1935, for all parishes within the combine of the Romanian Orthodox Missionary Episcopates of America, and takes out of use the different statutes in effect until now in the parishes.

* * * * *

PLAINTIFF'S EXHIBIT 13.

Articles of Association of the Episcopia Misionara Ortodoxa Romana in America—the Romanian Orthodox Missionary Episcopate in America.

We, the undersigned, desiring to become incorporated under the provisions of Act. No. 327, P. A. 1931, do hereby make, execute and adopt the following articles of association, to-wit:

First, The name assumed by this corporation and by which it shall be known in law, is Episcopia Misionara Ortodoxa Romana in America—The Romanian Orthodox Missionary Episcopate in America.

Second, The location of said Episcopate shall be in the village of Grass Lake, county of Jackson and state of Michigan; Post office address Grass Lake, Michigan.

Third, The time for which said corporation shall be created shall be unlimited.

Fourth, The member parishes of said Episcopate shall worship and labor together according to the discipline, rules and usage of the Romanian Orthodox church in the United States of America as from time to time authorized and declared by the Holy Synod of the Autokephalos Romanian Orthodox Church of Romania, its supreme canonical authority.

Fifth, (Here insert any desired additional provisions authorized by the Act).

Organized to preserve and secure the unity of worship by abiding in the unfeigned doctrines and tenets of the Eastern Orthodox faith and in the traditions and usages of the Romanian Orthodox Church, said Episcopate as ecclesiastical corporation: (a) shall manage, direct, govern and control the policies and interests of its component member-parishes according to the severally ratified by-laws enacted by its Church-Congress held, in 1932, Oct. 30, at Cleveland, O., and approved by the Holy Synod on Oct. 8, 1936: (b) shall create and upkeep on its own real-estate known as "VATRA ROMANEASCA," the estab-

lished, permanent seat of said Episcopate, out of the income of the land, of gifts, of annual dues, of collections made for this purpose, etc., under the management of a Church-Trustee Corporation invested with full authority by the governing body (The Episcopate Council): (1) A monastery; (2) a church-cemetery: and (3) other religious, charitable, educational, and social-recreational institutions that deem necessary in promoting the interests of the Church as provided by the Church-Congress.

In Witness Whereof, we, the parties hereby associating for the purpose of giving legal effect to these articles, hereunto sign our names and places of residence:

Done at the village of Grass Lake, county of Jackson and state of Michigan, this eight day of November, 1943.

Very Rev. Simion Mihaltian
acting for the Bishop and
President of Episcopal
Council.

Indiana Harbor, Ind.
3614 Elm St.

Rev. Andrew Moldovan, Secretary
1133 Madison St., Gary, Indiana.

* * * * *

(Other signatures omitted.)

PLAINTIFF'S EXHIBIT 14.

Warranty Deed, Edwin W. Chandler and Wife to Roumanian Orthodox Missionary Episcopate, May 18, 1938.

THIS INDENTURE, Made this 18th day of May in the year of our Lord one thousand nine hundred and thirty-eight, between EDWIN W. CHANDLER and RUTH DAY CHANDLER, his wife, hereinafter referred to as parties of the first part, and the ROUMANIAN ORTHODOX MISSIONARY EPISCOPATE, a non-profit Michigan corporation and His Grace Bishop Policarp P. Morusca not in his proper person but as the reigning prelate of the Roumanian Orthodox Churches in America under the authority vested in him by the Holy Synod in Roumania, or his successors as such in office, jointly, as hereinafter set forth, hereinafter referred to as parties of the second part,

Witnesseth, That the said parties of the first part, for and in consideration of the sum of One ($1.00) Dollar and other good and valuable considerations, to them in hand paid by the said parties of the second part, receipt whereof is hereby confessed and acknowledged, do by these presents grant, bargain, sell, remise, release, alien and confirm unto the said parties of the second part and to their successors and assigns forever all that certain piece or parcel of land situate and being in the Township of Grass Lake, County of Jackson, and State of Michigan, and described as follows, to-wit:

The east half of the northeast quarter, and the east half of the southeast quarter of Section seven (7), township three (3) south of range two (2) east; also the northeast quarter (¼) of the northeast quarter (¼) of Section eighteen (18), township three (3), south range two (2) east; containing two hundred (200) acres of land more or less. Together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining; To Have and to Hold the said premises as herein described with the appurtenances, unto the said parties of the second part and to its successors and assigns, FOREVER. It being agreed that the Roumanian Orthodox Missionary

Episcopate, a non-profit Michigan corporation, is organized for the charitable purpose of administering and managing properties of which the above described premises is a part thereof, for the benefit of the old, aged, infirm and orphans of the Roumanian populace of America.

It is further agreed that the Holy Synod of Roumania, as well as the Roumanian populace of America, have given funds for the purchase of the above described premises, and to insure the fulfillment of the objects of the original articles of incorporation of the above non-profit Michigan corporation.

It is intended that the corporation shall act only as trustees for and in behalf of the Roumanian populace of America and that neither they as such trustees, the Episcopate Council, nor the Churches Congress shall have the right to alter the purposes or the objects contained in the original articles of incorporation of the Roumanian Orthodox Missionary Episcopate, nor shall they have the right to sell, lease, assign, transfer, incumber nor do any act effecting the proprietary rights of the above described premises without the express consent and authorization of the Holy Synod of Roumania through its lawfully constituted representative now being His Grace Policarp P. Morusca, or his successor, as such, in office.

It is likewise agreed that the restrictions as to the corporate grantee in like manner applies to the Holy Synod grantee and it is the intent that jointly the grantees may do all necessary acts that any person holding title in fee may or could do, but that neither have any possessory or ownership rights without the consent of the other.

And the said EDWIN W. CHANDLER and RUTH DAY CHANDLER, his wife, parties of the first part, for themselves, their heirs, executors and administrators, do covenant, grant, bargain and agree to and with the said parties of the second part, its successors and assigns, that at the time of the ensealing and delivery of these presents and they are well seized of the above granted premises in fee simple; that they are free from all incumbrances whatever excepting a first mortgage to the Federal Land Bank of St. Paul for $7,000.00 and a second mortgage to the Land Bank

Commissioner for $7,500.00, which mortgages the second parties assume and agree to pay, and that they will, and their heirs, executors, their administrators shall warrant and defend the same against all lawful claims whatsoever.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

EDWIN W. CHANDLER
Edwin W. Chandler
RUTH DAY CHANDLER
Ruth Day Chandler

Signed, Sealed and Delivered
in the Presence of
R. A. PENCE
R. A. Pence
JOHN MORRIS
John Morris

(Acknowledgment and Certificate Omitted.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(Filed August 4, 1952.)

This action having been tried by the court without a jury, the court hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT.

1. The Romanian Orthodox Missionary Episcopate in America was first formed as an association in 1929.

2. The Romanian Orthodox Missionary Episcopate in America was incorporated in the state of Michigan in 1943 and is, at the present time, in good standing.

3. The Romanian Orthodox Missionary Episcopate in America is also known as, and for many years has also been known as:

The Romanian Orthodox Missionary Episcopate of America

The Romanian Orthodox Autonomous Missionary Episcopate in America

The Romanian Orthodox Autonomous Missionary Episcopate of America

The Romanian Orthodox Autonomous Episcopate in America

The Romanian Orthodox Autonomous Episcopate of America

The Romanian Orthodox Episcopate in America

The Romanian Orthodox Episcopate of America

Romanian Orthodox Missionary Episcopate.

4. The original by-laws of The Romanian Orthodox Episcopate in America, as approved by the member parishes in their Church Congress held in 1932, provided, among other things, that the Episcopate was to be autonomous in nature and its Congress was to have the power and authority to elect its own bishop.

5. The Church Congress held in 1936 approved certain changes in these by-laws to the effect that the election of the bishop would be accomplished by the Holy Synod in Romania, and the administrative canonical and spiritual affairs of the Episcopate would be under the direction of the bishop with the approval by the Holy Synod in Bucharest.

6. There was no bishop of The Romanian Orthodox Missionary Episcopate in America residing in the United States from 1939 until plaintiff, Andrei Moldovan, announced his claim to that title in November, 1950.

7. Because of fear of interfering and meddling by the Romanian authorities with church affairs in the United States, the Episcopate Council met in February of 1947 and decided to recreate the autonomy of the Episcopate and to return to the by-laws of 1932 until proper amendments could be prepared to conform to the new autonomous character of the organization.

8. In response to a call issued by the Episcopate Council, on March 28, 1947, a special Episcopate Congress

assembled in Detroit, Michigan, ratified the action of the Council taken in February, 1947, and passed a resolution restoring complete administrative autonomy to the Episcopate and declaring the right of the Congress hence-forth to elect its own bishop.

9. New amended by-laws conforming in all respects to the resolution of the special Congress of 1947 were finally adopted by the Congress of 1948 thus setting forth in specific language the autonomous character thus created of the Episcopate.

10. Andrei Moldovan, the plaintiff, not only partook of the deliberations which culminated in the new assertion of autonomy of the Episcopate, but in his capacity as Secretary of the Episcopate Council, he addressed a letter to the Patriarch in Bucharest informing him of the Council's refusal to accept one, Nica, as Bishop of the Episcopate.

11. Having previously severed its ties in respect to its administrative affairs, in 1951 by proper action the Episcopate also severed its ties with the Mother Church in Bucharest, Romania in respect of its spiritual and canonical affairs.

12. On November 16, 1950, by appropriate action of the Episcopate Council, the plaintiff, Andrei Moldovan was suspended and discharged as a priest of the Episcopate.

Conclusions of Law.

1. The Romanian Orthodox Missionary Episcopate in America, aka The Romanian Orthodox Missionary Episcopate of America, aka The Romanian Orthodox Autonomous Missionary Episcopate in America, aka The Romanian Orthodox Autonomous Missionary Episcopate of America, aka The Romanian Orthodox Autonomous Episcopate in America, aka The Romanian Orthodox Autonomous Episcopate of America, aka The Romanian Orthodox Episcopate in America, aka The Romanian Orthodox Episcopate of America, aka Romanian Orthodox Missionary Episcopate by reason of the decisions made

by it through its Episcopate Congress in 1947 and 1948, established its autonomy with respect to its rights to administer its own temporal affairs and particularly its right to elect its own bishop.

2. The Romanian Orthodox Missionary Episcopate in America, aka The Romanian Orthodox Missionary Episcopate of America, aka The Romanian Orthodox Autonomous Missionary Episcopate in America, aka The Romanian Orthodox Autonomous Missionary Episcopate of America, aka The Romanian Orthodox Autonomous Episcopate in America, aka The Romanian Orthodox Autonomous Episcopate of America, aka The Romanian Orthodox Episcopate in America, aka The Romanian Orthodox Episcopate of America, aka Romanian Orthodox Missionary Episcopate by reason of the decision made by it through its Episcopate Congress in 1951, established its autonomy with respect to its spiritual and canonical affairs.

3. After the establishment of its autonomy as created by the adoption of the new by-laws by the Congress of 1948, The Romanian Orthodox Missionary Episcopate in America achieved a decree of autonomy which thereafter denied the right of the Holy Synod in Romania to select and consecrate a bishop empowered with the authority to obtain possession of the real and personal property of the Episcopate in America.

4. The plaintiff, Andrei Moldovan, has never been elected and consecrated a bishop in conformity with the by-laws of The Romanian Orthodox Missionary Episcopate in America and is therefore not the bishop of said Episcopate.

5. The plaintiff, Andrei Moldovan, is not entitled to the possession, use, control or occupation of any of the real or personal property of the Romanian Orthodox Missionary Episcopate in America including the following described real and personal property:

(a) Funds in the approximate amount of Thirteen Thousand Dollars ($13,000.00) belonging to the

Episcopate and which funds were raised for the purpose and allocated to the purpose of constructing a Monastery at the Vatra, Grass Lake, Michigan.

(b) General funds collected from the various parishes for the sole and exclusive use of the Episcopate in the approximate amount of Five Thousand Dollars ($5,000.00).

(c) A weekly newspaper known as the "Solia," the official organ of the Episcopate, including the good will, subscription list, office equipment, and any and all funds belonging to said newspaper together with any and all assets thereof.

(d) The annual issue of an almanac known as the "Solia" Calendar published annually including the good will and subscription list, and any and all funds belonging to said publication together with any and all assets thereof.

(e) The real estate located at Grass Lake, Michigan, commonly referred to as the Vatra Farm together with all personal property of the Episcopate located thereon.

6. The plaintiff, Andrei Moldovan, is not a Priest of the Romanian Orthodox Missionary Episcopate in America.

/s/ FREED, *J.*,
United States District Judge.

ORDER OF PERMANENT INJUNCTION AND DISMISSAL OF AMENDED COMPLAINT.

(Entered August 4, 1952 by E. B. Freed, Judge.)

This case having come on for hearing on the amended complaint of the Plaintiff, Andrei Moldovan, the answer and counterclaim for interpleader of the defendants, the answer of The Romanian Orthodox Missionary Episcopate in America to the counterclaim for interpleader, the answer of The Romanian Orthodox Missionary Episcopate in America to the amended complaint of the Plaintiff, Andrei Moldovan, and the amended cross claim of The Romanian Orthodox Missionary Episcopate in America and the Court having considered all of the evidence submitted herein together with the pleadings and the entire record of the case; and the Court having rendered an opinion and made findings of facts and conclusions of law with respect to the same;

Now, Therefore, it is by this Court this 4th day of August, 1952, Ordered:

1. That the plaintiff, Andrei Moldovan, be and he hereby is permanently enjoined from representing himself as a priest or bishop of The Romanian Orthodox Missionary Episcopate in America a.k.a. The Romanian Orthodox Missionary Episcopate of America a.k.a. The Romanian Orthodox Autonomous Missionary Episcopate in America a.k.a. The Romanian Orthodox Autonomous Missionary Episcopate of America a.k.a. The Romanian Orthodox Autonomous Episcopate in America a.k.a. The Romanian Orthodox Autonomous Episcopate of America a.k.a. The Romanian Orthodox Episcopate in America a.k.a. The Romanian Orthodox Episcopate of America a.k.a. Romanian Orthodox Missionary Episcopate.

2. That the plaintiff, Andrei Moldovan, be and he hereby is permanently enjoined from using the name "Solia" as the title to any publication.

3. That the Plaintiff, Andrei Moldovan, be and he hereby is permanently enjoined from the use, control or occupation of any of the real or personal property of

The Romanian Orthodox Missionary Episcopate in America a.k.a. The Romanian Orthodox Missionary Episcopate of America a. k. a. The Romanian Orthodox Autonomous Missionary Episcopate in America a.k.a. The Romanian Orthodox Autonomous Missionary Episcopate of America a.k.a. The Romanian Orthodox Autonomous Episcopate in America a.k.a. The Romanian Orthodox Autonomous Episcopate of America a.k.a. The Romanian Orthodox Episcopate in America a.k.a. The Romanian Orthodox Episcopate of America a.k.a. Romanian Orthodox Missionary Episcopate, including the following described real and personal property:

(a) Funds in the approximate amount of Thirteen Thousand Dollars ($13,000.00) belonging to the Episcopate and which funds were raised for the purpose and allocated to the purpose of constructing a Monastery at the Vatra, Grass Lake, Michigan.

(b) General funds collected from the various parishes for the sole and exclusive use of the Episcopate in the approximate amount of Five Thousand Dollars ($5,000.00).

(c) A weekly newspaper known as the "Solia," the official organ of the Episcopate, including the good will, subscription list, office equipment, and any and all funds belonging to said newspaper together with any and all assets thereof.

(d) The annual issue of an almanac known as the "Solia" Calendar published annually including the good will and subscription list, and any and all funds belonging to said publication together with any and all assets thereof.

(e) The real estate located at Grass Lake, Michigan, commonly referred to as the Vatra and Vatra Farm together with all personal property of the Episcopate located thereon.

4. That the Plaintiff, Andrei Moldovan, be and he hereby is permanently enjoined from asserting any rights

based upon the claim that he is the bishop of the said Episcopate to use, control or occupy either directly or indirectly any of the real or personal property of the Romanian Orthodox Missionary Episcopate in America a.k.a. The Romanian Orthodox Missionary Episcopate of America a.k.a. The Romanian Orthodox Autonomous Missionary Episcopate in America a.k.a. The Romanian Orthodox Autonomous Missionary Episcopate of America a.k.a. The Romanian Orthodox Autonomous Episcopate in America a.k.a. The Romanian Orthodox Autonomous Episcopate of America a.k.a. The Romanian Orthodox Episcopate in America a.k.a. The Romanian Orthodox Episcopate of America a.k.a. Romanian Orthodox Missionary Episcopate, including the following described real and personal property.

(a) Funds in the approximate amount of Thirteen Thousand Dollars ($13,000.00) belonging to the Episcopate and which funds were raised for the purpose and allocated to the purpose of constructing a monastery at the Vatra, Grass Lake, Michigan.

(b) General funds collected from the various parishes for the sole and exclusive use of the Episcopate in the approximate amount of Five Thousand Dollars ($5,000.00).

(c) A weekly newspaper known as the "Solia," the official organ of the Episcopate, including the good will, subscription list, office equipment, and any and all funds belonging to said newspaper together with any and all assets thereof.

(d) The Annual issue of an almanac known as the "Solia" Calendar published annually including the good will and subscription list, and any and all funds belonging to said publication together with any and all assets thereof.

(e) The real estate located at Grass Lake, Michigan, commonly referred to as the Vatra and Vatra Farm together with all personal property of the Episcopate located thereof.

5. That the amended Complaint of the plaintiff be dismissed and that the plaintiff, Andrei Moldovan pay the costs incurred in this action.

Dated: Aug. 4, 1952

/s/ FREED, J.

United States District Judge.

FILED
DEC 3 1953
HAROLD B. WILLEY,

In the Supreme Court of the United States

OCTOBER TERM, 1953.

No. 422.

THE ROMANIAN ORTHODOX MISSIONARY EPISCOPATE OF AMERICA, THROUGH HIS GRACE BISHOP ANDREI MOLDOVAN,

Petitioner,

vs.

IOAN TRUTZA, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

PERCY H. RUSSELL,
800 World Center Bldg.,
Washington 6, D. C.,
Attorney for Respondents.

STRANGWARD AND LLOYD,
1209 National City Bank Bldg.,
Ceveland 14, Ohio,
Of Counsel.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-9547

TABLE OF CONTENTS.

Opinions Below ---------- 1

Jurisdiction ---------- 1

Questions Presented ---------- 2

Statement of Facts ---------- 2

Argument ---------- 9

Conclusion ---------- 14

Cases Discussed.

Kedroff vs. St. Nicholas Cathedral of the Russian Orthodox Church in North America, 344 U. S. 94 13

Rosicrucian Fellowship (a corporation) et al., appellants vs. The Rosicrucian Fellowship Non-Sectarian Church (a corporation) et al., Respondents, United States Supreme Court Docket No. 482, October Term, 1952, 39 Cal. 2nd 121, 245 Pac. 2nd 481 ---------- 13-14

Watson v. Jones, 13 Wall. 679 ---------- 13

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BRIEF FOR RESPONDENTS IN OPPOSITION.

OPINIONS BELOW.

The opinion of the Court of Appeals (R. 107-117) has been reported at 205 Fed. 2nd 107. The opinion, the findings of fact and conclusions of law, and the final order of the District Court (RD. 102a-105a; RP. 34a-38a; 39a-42a)[1] are not reported.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the petition.

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[1] References to the proceedings in the lower court are designated as "R." References to the appendix of appellants' brief in the lower court are designated "RP"; to the appendix of appellee's brief "RD." References to the stenographic transcript of proceedings in the trial court are designated as "TR."

QUESTIONS PRESENTED.

1. Whether the Patriarch and Holy Synod of the Romanian Orthodox Church, or a Congress composed of clergymen and laymen of the American Churches, validly selects the ruling hierarch for the American Churches.

2. Whether Andrei Moldovan has power and authority to obtain possession and control of the property in question, and to exercise the privileges and prerogatives of bishop of the Episcopate by virtue of his selection and consecration as bishop of North and South America by the Supreme Church Authority of the Romanian Orthodox Church, to-wit: the Patriarch of Bucharest and the Holy Synod.

STATEMENT OF FACTS.

Respondents cannot accept the statement of the case as presented by Petitioner because a correct statement of the case materially affects the answers to the questions presented by the Petitioner. Respondents therefore submit the following statement of the case which they believe is more than adequately supported by the evidence and testimony adduced at the trial of the case in the District Court, and for purposes of convenience in this statement we shall refer to the Petitioner as the plaintiff and to the Respondents as defendants, which was their relative status in that Court.

Although the caption of the case at bar would make it seem to appear that the plaintiff in this action is the Romanian Orthodox Missionary Episcopate of America, an examination of the files reveals the following facts.

The body of the amended complaint reveals that the plaintiff is in fact one Andrei Moldovan, and his complaint is directed against the duly elected officers of the

Romanian Orthodox Missionary Episcopate of America demanding of them that they recognize the plaintiff as the duly elected Bishop of the Romanian Orthodox Missionary Episcopate of America, and turn over to the plaintiff certain assets which the defendants have in their possession, which are admitted to be the property of the Episcopate. The individual defendants, Ioan Trutza, James V. Suciu, and Viorel D. Trifa, filed their answer denying the contention of the plaintiff, interpleaded the corporate entity of the Romanian Orthodox Missionary Episcopate of America and admitted that they had no personal interest in the assets in question.

The Romanian Orthodox Missionary Episcopate of America then entered a voluntary appearance in the action and filed its answer to the amended complaint of the plaintiff Andrei Moldovan; Answer to the Counterclaim for Interpleader of the defendants, Ioan Trutza, James V. Suciu and Viorel D. Trifa, and further filed a cross-claim of its own against the plaintiff Andrei Moldovan in which it asked for certain injunctive relief against the plaintiff Andrei Moldovan.

With this explanation we shall hereafter refer to the plaintiff or the appellant as being Andrei Moldovan and our reference to the Romanian Orthodox Missionary Episcopate shall be designated as "the Episcopate."

The Romanian Orthodox Missionary Episcopate of America is a religious organization organized largely by people of Romanian heritage in the U. S. A. and Canada which has had a continual existence since approximately 1929. In 1932 it adopted its first set of official by-laws. Among other things those by-laws provided that the organization was to be autonomous in the administration of its temporal affairs, although in its spiritual affairs it would follow the teachings of the Romanian Orthodox Church

of Romania. Those by-laws further specifically provided that the Bishop of the Episcopate must be elected by the Episcopate Congress assembled in the U. S., which consisted of a body of clergy and lay delegates elected from the various parishes in the Episcopate in a democratic and representative manner. The by-laws made the election of a Bishop part of the administration of temporal affairs, but did not require that the Bishop elected be a resident of America.

In 1935, at the request of the Episcopate, the Holy Synod in Bucharest, Romania sent to America, Policarp Morusca who became the first Bishop of the Episcopate.

In 1936 Bishop Morusca appeared before the Episcopate Congress and requested that those by-laws be changed so as to provide for the election of the Bishop of the Episcopate by the Holy Synod of Romania, and he explained this request by saying that it was necessary in order for him to receive his pay from the Holy Synod in Romania which was there a State-supported institution deriving its funds from the Government. The Episcopate Congress honored the request of the Bishop and changed the by-laws accordingly. Further, at the request of the Bishop, the Congress at the same time passed a resolution to the effect that thenceforth the by-laws would not be changed except upon approval of the Holy Synod in Bucharest.

In 1939 Bishop Morusca returned to Bucharest, Romania and has never returned to the United States. From that time until the events in question in this law suit, there was no bishop of the Episcopate in the United States.

The advent of the Second World War and the fact that Romania became an enemy nation terminated any further normal intercourse between the Episcopate here in America and the Hoy Synod in Bucharest, and to this day

there has never been a treaty of peace signed between the United States and Romania.

In 1943 the Episcopate was incorporated under the laws of the State of Michigan, but continued to use and be known by other names as follows:

The Romanian Orthodox Missionary Episcopate of America,
The Romanian Orthodox Autonomous Missionary Episcopate in America,
The Romanian Orthodox Autonomous Missionary Episcopate of America,
The Romanian Orthodox Autonomous Episcopate in America,
The Romanian Orthodox Autonomous Episcopate of America,
The Romanian Orthodox Episcopate in America,
The Romanian Orthodox Episcopate of America,
Romanian Orthodox Missionary Episcopate.

Early in 1947 the Episcopate's Council received a communication from the Romanian Legation in Washington advising that the Holy Synod in Bucharest was appointing one Nica as Bishop of the Episcopate. Fearing the interference and meddling of the Communistic Romanian authorities with church affairs in the United States, the Episcopate Council unanimously decided to take emergency action and restore to the Episcopate the autonomous character of organization which had previously existed and, to do this, unanimously re-adopted the by-laws of 1932 as a temporary measure until a complete new set of by-laws could be adopted conforming in all respects to the restored autonomous character of the organization. The Secretary of the Episcopate Council at that time was the plaintiff Andrei Moldovan. This action by the Council was

by unanimous vote of the Council and accordingly, the Secretary sent a notice to all of the members of the Congress that a special Congress meeting would be convened on March 28, 1947 in Detroit, to pass upon the question of restoring complete autonomy to the Episcopate.

In response to the call sent out by the plaintiff Andrei Moldovan as Secretary of the Episcopate Council, a Church Congress did assemble in March, 1947 in Detroit, and there *unanimously* passed a resolution restoring complete administrative autonomy to the Episcopate, and declaring the right of the Congress henceforth to elect its own Bishop as originally provided in the by-laws of 1932.

In July of 1947, at its regular annual meeting, the Church Congress of the Episcopate postponed any action relative to further changes in the by-laws because the committee elected to draft the new set of by-laws had not yet completed its work. In June of 1948 the Episcopate Council caused to be published in its official newspaper, Solia, the committee's composite draft of the suggested changes to the Constitution and By-laws of the Episcopate, and at the annual meeting of the Episcopate Congress in July of 1948, these proposed changes were taken up one by one and adopted. (RD. 27a-38a.) Again by *unanimous* vote the Episcopate Congress reaffirmed the autonomous character of the Episcopate and particularly its right to nominate and elect its own bishop.

On April 30, 1947, the plaintiff, Andrei Moldovan, who was then the Secretary of the Episcopate Council, wrote a letter to the Patriarch in Bucharest, Romania, in which he said in part, "By virtue of this loyalty we have been opposed not to the Holy Synod, not to your Beatitude, neither to His Grace, Bishop Nica, of whose integrity and archpriestly worthiness we have no doubt, but against the meddling of the political power in the affairs of the church.

That is why our Church Congress, held on March 28, 1947, resolved to abrogate the statute which was imposed upon us by His Grace, the Bishop of the western unorthodox countries, Policarp, which statute had made of us a section of an episcopate created outside of the boundaries of the United States, and decided to return to the original statute which has been approved by the Holy Synod in November of 1929." (RD. 23a-25a.)

The plaintiff, Andrei Moldovan, was a delegate to, and attended, the special Church Congress held in March of 1947, and the regular Church Congress held in July 1948, at which the actions taken with respect to the by-laws of the Episcopate were by unanimous vote.

Since March of 1947 the Episcopate has continued to function and administer its affairs as an autonomous organization, and the plaintiff continued to serve as a member of the Episcopate Council and as the priest of the parish in Akron, Ohio until October 29, 1950.

In June of 1950 there was a second religious corporation organized under and by virtue of the laws of the State of Michigan bearing the name *"The Romanian Orthodox Autonomous Episcopate of North and South America,"* having as its official address, 1799 East State Fair Avenue, Detroit, Michigan. (RD. 48a-50a.) It should be noted at this time that this is a separate and distinct corporate body and is not the Romanian Orthodox Missionary Episcopate of America which is a party litigant in this case. For convenience and clarity in reference, we shall refer to this second corporation as the "New Episcopate." It is so referred to in the record of the testimony. (RD. 65a; 67a.) In order to avoid any confusion may we again remind the Court that in referring to the corporate entity which is a party to this litigation, we will use the term "Episcopate."

On October 29, 1950 the Plaintiff Andrei Moldovan advised his parishioners that he was ill and needed to go away for his health. He left the City on that day and subsequently various members of the Plaintiff's Akron parish received postcards, all written in the handwriting of the Plaintiff and postmarked at The Hot Springs National Park, Arkansas, on the 3rd day of November, 1950. (RD. 75a-79a.) Near the end of November the Plaintiff reappeared in Detroit, Michigan and announced that in fact he had been to Bucharest, Romania and there consecrated a Bishop by the Holy Synod. In December of 1950 he caused to be published a booklet purporting to tell of his activities during his sojourn in Romania, and in that booklet he is quoted as saying that he was called to Romania "to become successor to the Holy Apostles at the helm of *The Romanian Orthodox Autonomous Episcopate of North and South America,*" which the testimony reveals was the new corporate Episcopate incorporated in June 1950 and not the Respondent Episcopate. (RD. 86a-87a.)

When the Episcopate refused to recognize him as its Bishop, the Plaintiff filed his action in the District Court.

In the course of the litigation of this case in the District Court, there were two rather lengthy hearings, the first of which took place in January of 1951 at which there was a hearing on the Plaintiff's request for a preliminary injunction. At that hearing the Plaintiff, in his attempt to prove that he was the Bishop of the Episcopate and as such entitled to the possession and control of the assets of the Episcopate, introduced certain evidence, all of which indicated that if the Plaintiff was elected and consecrated a Bishop by the Holy Synod in Bucharest, Romania, which the Defendants and the Episcopate deny, then he was in fact elected the Bishop of the so-called "New Episcopate"

and not the Bishop of the Romanian Orthodox Missionary Episcopate of America.

At the final hearing of this case in the District Court, the Plaintiff completely changed his position with respect to his evidence and testimony, and after hearing all of the facts, the District Court found and so stated in its opinion that the Defendants had proven their contention that the Plaintiff was not in fact the Bishop of the Romanian Orthodox Missionary Episcopate of America, and that if the Plaintiff was a Bishop of any kind, he must of necessity be the Bishop of the New Episcopate formed in 1950. (RD. 102a; 105a.) The District Court further found that the Plaintiff had failed completely to prove his contentions.

ARGUMENT.

The importance of the disparity in the statements of the case by Petitioner and Respondents now becomes apparent. Assuming that the first Question propounded by Petitioner is meritorious in the case at bar, which Respondents deny, its answer is immaterial to the outcome of this case because Petitioner has failed to prove to the satisfaction of the District Court and to the Court of Appeals that he has been either elected, nominated, appointed or consecrated the bishop of the Respondent Episcopate by any authority whatsoever.

In Petitioner's second Question he begs the issue because the question assumes that he has been duly elected, qualified and consecrated as the bishop of the Respondent Episcopate. His only claim to the possession and control of the property of the Respondent Episcopate is by virtue of his claim that he is Respondent's bishop. Were he in fact such there would be no litigation. But not having proved his position he is without the right to exercise

the power of possession and control over the property of the Episcopate.

Petitioner assumes at all times that his nomination, election and consecration as the bishop of the Romanian Orthodox Episcopate of America is not in question and that he has proven that to be the fact, whereas exactly the contrary is true. On page seven of Petitioner's brief he says:

> "* * * a group of clergy and lay members of the Episcopate met in a conference in May, 1950 and determined that the solution to the problems of the Episcopate would be the selection of an American citizen as bishop and ruling hierarch of the Episcopate. In accordance therewith, they directed their efforts to the Supreme Church authority in Romania. Upon the recommendation of this group the Patriarch and Holy Synod in Romania selected Father Arch-Priest Andrei Moldovan, an American Citizen, as bishop and ruling hierarch of the American diocese * * *."

Now to what "diocese" was Petitioner referring? The new Episcopate, incorporated in Michigan in June 1950 (RD. 48a) has as its official name "The Romanian Orthodox Autonomous Episcopate of North and South Americas," a name never used by the Respondent Episcopate. The cablegram, which Petitioner claims was sent to him by the authorities in Romania ordering him to go to Bucharest to be ordained a bishop, was addressed to him as an Arch-Priest of The Romanian Orthodox Episcopate of North and South America. (RD. 63a; RD. 68a.)

The address to which that cablegram was sent was "1799 E. State Fair, Detroit, Michigan"—the official address of the new Episcopate as it appears in the Articles of Incorporation. (RD. 48a; 68a.)

The unauthenticated document which Petitioner calls his "Gramata" and which he produced *as his evidence of his consecration as a bishop* at the hearing that he requested for a preliminary injunction, contains the statement:

> "* * * seeing the unanimous expressed wish of the Eparchial assembly of this episcopate held or convened on May 17, 1950, in Detroit, to have as bishop the very Reverend Arch-Priest Andrei Moldovan" (RD. 79a-80a).

Petitioner testified under oath at that preliminary hearing that he had been nominated or elected on May 17, 1950 in Detroit, Michigan, as a bishop by a group of people who were associated with that new episcopate and that he had the minutes of such meeting to prove it (but not with him at that moment) and yet at the final hearing of this cause in the District Court he took an exactly contrary position. (RD. 51a-56a; 95a-97a.) His obvious reason for this change of position was the fact that the unauthenticated documents, for what they were worth, were nevertheless pointing to the conclusion that all of the dealings of the Holy Synod were with the new Episcopate or its associates and had nothing to do with the Respondent Episcopate.

The comments of the District Court upon the testimony of Petitioner are particularly pertinent in this respect. (RD. 95a-97a; 99a-101a.)

Immediately upon his announcement of his claim to the office of Bishop, Petitioner published a booklet purporting to tell of his activities in Romania. (RD. 86a.) In that booklet he says that he was called "to become a successor to the Holy Apostles at the helm of The Romanian Orthodox Autonomous Episcopate of North and South Americas." (RD. 86a.) Again Petitioner has staring him

in the face the official name of the new Episcopate and his admission that if he was made a bishop he was made bishop of that episcopate and not bishop of Respondent Episcopate.

Petitioner also had made an official seal to be affixed to his official letters and documents. That seal also bore the name of the new episcopate. (RD. 89a.) Obviously at that early date Petitioner did not foresee that Respondents would discover his fraud and deceit and that he would become caught in his own trap,

In reply to Petitioner's first, second and third assigned reasons for granting the writ may we say that in the opinion of Respondents the decisions of both the District Court and the Court of Appeals reaffirm and strengthen the fundamental concept of the separation of church and State. Those decisions reaffirm and strengthen the right of free Americans to enjoy the freedom of religious worship free from the interference of a foreign state equally as much as interference from a domestic State; free from the demands of imposters and free from the fraudulent and deceitful practices of unscrupulous clerics or demagogues who would through fraud and deceit attempt to wrongfully impose themselves upon a church organization and then claim that the constitutional guarantee of freedom of religion prevents such church organization from resorting to the orderly processes of the law to assure themselves of the very freedom which the law is obliged to protect.

The Petitioner is guilty of fallacious reasoning in assuming that the courts are helpless and cannot protect the innocent from the encroachments of the wicked upon a freedom guaranteed to the people by the Constitution of the United States of America. The absurdity of the argument is self evident and needs no further comment.

In answer to Petitioner's fourth assigned reason for granting the writ we admit the principles expressed in the *Kedroff* case and the *Watson* case to be sound and good law but we respectfully submit that they are distinguishable from the case at bar and are not applicable to the facts in this case. As was pointed out by the Court of Appeals there was no legislation involved as in the *Kedroff* case. Furthermore it is worthy of note at this point that this case is not one where the proper church procedure has admittedly been followed in either appointing, electing, nominating or consecrating the Petitioner as the bishop of the Respondent Episcopate but on the contrary one in which both the District Court and the Court of Appeals found that regardless of the questions of law involved the Petitioner has totally failed to prove his claim that he is the duly elected, qualified and consecrated bishop of the Respondent Episcopate. The District Court said, "It is the contention of the defendants that if the plaintiff, Andrei Moldovan, was, in fact, consecrated a bishop by the Holy Synod of Bucharest, Romania, he was consecrated as such bishop of a new and wholly separate episcopate." (RD. 102a.) "The contentions of the defendants, which I have recited, have been clearly established." (RD. 105a.)

The Court of Appeals said

> "The decision must in any case be affirmed upon the ground that the plaintiff Moldovan has not borne the burden of proof in showing that he has been elected or consecrated as bishop of the Episcopate." (R. 116.)

In closing may we respectfully call to this Honorable Court's attention a case which this Court recently refused to certify: *The Rosicrucian Fellowship (a corporation) et al., appellants vs. The Rosicrucian Fellowship Non-Sectarian Church (a corporation) et al., Respondents,*

United States Supreme Court Docket No. 482, October Term, 1952, 39 Cal. 2nd 121, 245 Pac. 2nd 481. That was a case wherein civil and property rights were determined and injunctive relief granted just as in the case at bar.

CONCLUSION.

In conclusion we submit that the decisions in both the District Court and the Court of Appeals were correct in all respects both as to the findings of fact and conclusions of law; that there is no conflict of decisions involved and no important question of Federal law has been raised under the facts in this case, and that therefore the petition for a writ of certiorari should be denied.

Respectfully submitted,

PERCY H. RUSSELL,

Attorney for Respondents.

STRANGWARD & LLOYD,

Of Counsel.